150 US 468

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RECORD, CASE No. 14,029.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., ~~312~~. 100

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

C. H. AKENS, EXECUTOR OF A. O. SMITH, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED MAY 7, 1890.

RECORD, CASE No. 14,029.

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vs.

C. H. AKENS, EXECUTOR OF A. O. SMITH, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Caption	1	1
Docket entries	1	1
Transcript from State court	3	2
Docket entries	4	2
Order for removal	5	3
Præcipe for summons, &c.	6	4
Copy of statement and contract on which suit is brought	7	4
Policy	7	4
Table	14	7
Application	15	7
Table	23	13
Complaint	24	15
Summons	27	16
Sheriff's return	27	16
Petition for removal	30	18

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	Original.	Print.
Bond for removal	34	20
Order for removal	37	22
Clerk's certificate	39	23
Affidavit of defense	40	23
Defendant's plea and order to place case on issue docket	42	24
Replication	43	25
Minutes of trial	46	26
Charge of the court	47	27
Motion and reasons for new trial	57	32
Order overruling motion for new trial	58	32
Bill of exceptions	58	33
Complaint	59	33
Plea	60	34
Replication	62	35
Jury	63	35
Statement of evidence	63	36
Defendant's points	65	36
Verdict	68	38
Judge's certificate	68	38
Bond on writ of error	69	38
Certificates to record	71	40
Writ of error	72	40
Citation	73	41
Marshal's return	74	41

1 Among the rolls, records, and judicial proceedings had in the circuit court of the United States for the western district of Pennsylvania, entered at No. 17, May term, 1888, wherein C. H. Akens, executor of A. O. Smith, is plaintiff and The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, is defendant, may be found the following words and figures, to wit:

Appearance Docket Entries.

C. H. AKENS, Executor in Estate of Archibald O. Smith, Deceased,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

D. B. & L. T. Kurtz; W. S. Purviance.

Record on removal from the court of common pleas of Lawrence Co., Pa. Summons in action of assumpsit; also issued copy of statement and contract filed herewith, to be delivered to defendant with service of writ. Returnable on the first Monday of March, A. D. 1888; issued January 14, 1888.

Jan'y 14, 1888.—Statement of plaintiff's claim and copy of contract filed. Defendant served with writ, &c., on Jan'y 18, 1888, by delivering a true and attested copy to Walter H. Tilden, the defendant company's agent at Phila., Pa.

Feb'y 4, 1888.—Affidavit of service of plaintiff's statement and copy of contract filed.

March 3, 1888.—Petition, affidavit, and bond for removal
2 of case to the U. S. circuit court, west. dist. of Pa., filed.

March 5, 1888.—Order granted approving bond on removal and directing that proceedings be stayed and case removed to the circuit court of the United States for the western district of Pennsylvania filed.

1888, May 1.—Exemplification of the record from the court of common pleas of Lawrence county, Pa., received and filed. Same day, affidavit of defense filed.

1889, March 6.—Plea filed.

1889, April 10.—Replication of plaintiff filed.

1889, May 14.—Case called for trial, jury sworn, and trial proceeded with.

May 15.—Trial proceeds.

May 16.—Trial proceeds.

May 17.—Trial proceeds, arguments made, and the court charges the jury, who retire. Same day, defendant's points and answers thereto by the court filed.

1889, May 18.—Jury render a verdict in favor of plaintiff for the sum of eleven thousand two hundred fifty-one and $\frac{66}{100}$ ($11,251.66) dollars.

1889, May 22.—Motion for a new trial, with reasons, allowed to be filed.

1889, May 23.—Plaintiff's bill of costs, amounting to $110.50, filed.

1889, June 17.—On motion of def't's att'y rule granted to take testimony on part of defendant, upon the motion for a new trial, before Chas. W. Haws, alderman, at New Castle, Pa., on June 20, 1889. Same day, certificate issued to appointee.

1889, June 25.—Charge of the court filed. Same day, dep-
3 ositions on part of defendants, on motion for new trial, in pursuance of above rule, filed. Same day, motion for a new trial argued, *c. a. v.*

1889, June 28.—Motion for a new trial denied, per order made and filed.

1889, June 28.—Judgment is hereby entered upon the verdict in the above case.—H. D. Gamble, clerk.

1889, July 8.—Petition, with reasons, for a re-argument of motion for a new trial filed.

1889, Aug. 12.—Rule granted on plaintiff on above petition to show cause why the motion for a re-argument of the motion for a new trial should not be allowed and the judgment heretofore entered vacated, all proceedings in the meantime to be stayed.

1889, Dec. 18.—Rule granted in above case to show cause why a re-argument on motion for a new trial should not be granted, &c., is discharged, per order filed.

1890, Feb'y 11.—Bill of exceptions filed. Same day, writ of error to U. S. Supreme Court allowed and issued. Same day, citation signed and bond on writ of error approved & filed.

1890, Feb'y 15.—Citation served on plaintiff.

(*Exemplification of Record from Lawrence County.*)

Among the records of the court of common pleas of Lawrence county, Penna., at No. 38, March term, 1888, wherein C. H. Akens, executor in estate of Archibald O. Smith, deceased, is plaintiff and The Connecticut Mutual Life Insurance Company of Hartford, Conn., is defendant, may be found the following:

4 March Term, 1888.

C. H. Akens, Executor in Estate of Archibald O. Smith, Deceased,
vs.
The Connecticut Mutual Life Insurance Company of Hartford, Connecticut.

Pro. & tax, p'd	$2 00
Att'y	3 00
Sh'ff, W.	1 00
" K.	3 00
Pro. G. record	4 00

Summons in action of assumpsit; also issued copy of statement and contract herewith filed, to be delivered to defendant with serv-

ice of writ. Returnable on the first Monday of March, A. D. 1888; issued Jan. 14, 1888.

And now, Jan. 14, 1888, statement of plaintiff's claim and copy of contract filed.

I hereby depute the sheriff of Philadelphia county to serve the within summons and statement.

WM. G. WARNOCK,
Sheriff of Lawrence Co., Pa.

Served The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, the defendant, an insurance company incorporated under the laws of the State of Connecticut and having an agency established in the city of Philadelphia, in the State of Pennsylvania, under the laws thereof, by giving, January 18th, 1888, at the office of the said agency, No. 530 Walnut St., in said city, a true and attested copy of the within writ to Walter H. Tilden, the agent designated by said company under the laws of Pennsylvania to receive the service of process, and making known to him the contents thereof.

So ans.—

JAMES F. HEORON,
Deputy Sheriff.

Feb'y 4th, 1888.—Affidavit of service of plaintiff's statement and copy of contract filed.

March 3, 1888.—Petition, affidavit, and bond for removal of above-stated case to the circuit court of the United States for the western district of Penna. filed.

And now, to wit, March 5th, 1888, being the first day of the March term, 1888, — common pleas court holden for Lawrence county, State of Pennsylvania, Malcolm McConnell, Esq., appearing in behalf of the petitioner, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, the defendant in the above-entitled suit, and the Mess. D. B. & L. T. Kurtz, Esqs., appearing on behalf of the plaintiff in said suit, was presented to the court the petition (with the accompanying bond), which petition and bond were filed among the records in this suit on the 3rd of March, 1888, of the petition- for a removal of this suit from the court of common pleas of Lawrence county into the circuit court of the United States for the western district of Pennsylvania, and the court was moved by the attorney for the petitioner to accept said petition and bond and to proceed no further in the said suit and to order that this said suit be removed into the circuit court of the United States for the western district of Pennsylvania; whereupon, after consideration of said motion, the court adjudged said bond to be good and sufficient, and do accept said petition and bond and order and direct that no further proceedings be had in this court in said suit, and that the same be removed into the circuit court of the United States for the western district of Pennsylvania.

BY THE COURT.

In the Court of Common Pleas of Lawrence County, Pennsylvania.

C. H. AKENS, Executor of the Estate of Archibald O. Smith, Deceased,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN. } No. 38, March Term, 1888.

Issue summons in action of assumpsit, returnable on first Monday of March, A. D. 1888; also issue copy of statement and contract herewith filed, to be delivered to defendant with service of writ.

D. B. & L. T. KURTZ,
Att'ys for Pl'ff.

To J. H. Gilleland, prothonotary.

Filed January 14, 1888.

7 (*Copy of Statement and Contract on Which Suit is Brought.*)

(Copy.)

No. 179,555. Term of, life.

Annual premiums.

The Connecticut Mutual Life Insurance Company.

Sum insured, $10,000.

On the life of Archibald O. Smith.

Age at issue, 27.

Annual premium, $211.50.

The annual premium on this policy is due and payable on the fourteenth day of January.

Form 153. Ex'd by J.

The Connecticut Mutual Life Insurance Company of Hartford, Connecticut,

In consideration of the application for this insurance, which is the basis of and a part of this contract, and a copy whereof is hereunto annexed, and of the several answers, warranties, and agree-
8 ments therein contained, and of the annual premium of two hundred and eleven $\frac{50}{100}$ dollars, to be paid to them on the fourteenth day of January, 1887, and on or before the same date in every year during the continuance of this policy,

Do hereby insure the life of

Archibald O. Smith, the insured, of New Castle, county of Lawrence, State of Pennsylvania, for the term of his natural life, in the sum of ten thousand dollars, the said sum insured to be paid

at the office of said company, in Hartford, Conn., to his legal representatives, thirty days after due notice and satisfactory evidence of the death of said insured while this contract is in full force and effect shall have been received in said office in Hartford, Conn., and upon surrender and satisfactory release thereof; any balance of the year's premium when not all paid at the beginning of the year and any other indebtedness to this company on account of this policy being first deducted therefrom; and, if after the payment of three or more annual premiums as above, any subsequent premium or installment of premium be not paid when due, said company do thereupon and thereafter and upon the same considerations hereinbefore set forth, but without further payment of premiums, insure said life for said term but only in a sum to be ascertained by the table of paid-up insurance endorsed hereon and hereby made a part of this contract, such sum to be payable at the time and place and in the manner and to the persons above named; and it is agreed by all the parties hereto that this provision is and shall be in substitution for and in waiver of their several rights under any law of any State relating to the lapse or forfeiture of policies of life insurance; and at the end of ten years from the date above, or at the end of each period of five years thereafter, this policy having been in force during such entire periods for the full sum first above named as insured hereby and not otherwise, this company will pay a cash value therefor, to be ascertained by the table of cash values endorsed hereon and hereby made a part of this contract; such cash value to be payable at its said office upon surrender hereof released and discharged to the satisfaction of said company within thirty days after the end of each such period.

Subject to the conditions and agreements upon the second page of this policy, which are hereby referred to and made a part of this contract.

In witness whereof, the said The Connecticut Mutual Life Insurance Company have, by their president and secretary, signed and delivered this contract in the city of Hartford, State of Connecticut, this fourteenth day of January, A. D. one thousand eight hundred and eighty-seven.

JACOB L. GREENE, *President.*

WILLIAM G. ABBOTT, *Secretary.*

153. Own annual life.

This policy is issued and accepted upon the following express conditions and agreements, referred to on the first page and made a part of this contract:

1st. That this contract of insurance is wholly expressed and contained in this policy and the application therefor, which is the basis of and a part of said contract and a copy whereof is hereto annexed, and the several answers, warranties and agreements therein contained.

2nd. That this policy shall not be in force and binding on this company until the advance premium hereon shall have been actu-

ally paid during the lifetime of the insured; and that if any subsequent premium or installment of premium, on this policy be not paid when due, then this policy shall cease and determine, and become and be null and void, except as hereinbefore provided after the payment of three or more annual premiums; and that no premium on this policy shall be considered as paid unless a receipt shall be given therefor, signed by the president or secretary of the company, and such receipt is the sole evidence of the authority of any agent to receive any premium on account of this policy; and that all premiums or other payments on account of this policy are payable at the office of the company at Hartford, Conn., and not elsewhere, but for convenience of the person paying the same, such receipt may be sent to any agent or correspondent of the company for collection, and payment to such agent or correspondent shall be held to have been made at said office of the company.

Residence and travel.—3rd. That the following risks are not assumed by this company under this contract:

Death while residing or being, or from any disease contracted while residing or being, outside the temperate zones, or in that part of Asia between the fortieth and one hundred and tenth meridians of longitude east from Greenwich; or, between the first day of June and the first day of the following November,
11 within one hundred and fifty miles of the Gulfs of Mexico and California, or between the forty-second parallel of north latitude and the tropic of Cancer in the Eastern hemisphere, without the consent of the company previously given in writing:

Occupation.—Death while personally engaged or employed, or from any accident or injury received while engaged or employed, in making any aeronautic voyage or excursion, or in blasting, mining, or in any submarine operations, or in the manufacture, handling, use, custody, or transportation of highly inflammable or explosive substances, or upon service on any ocean, sea, sound, inlet, river, lake, or railroad, or in any military or naval service whatsoever in time of war, whether voluntary or otherwise, or as a member of any paid fire department, without the consent of this company previously given in writing:

Violation of law.—Death in consequence of a duel, or in the violation of law, or in consequence thereof, or after conviction of felony:

Suicide.—The self-destruction of the insured, in any form, except upon proof that the same is the direct result of disease or of accident occurring without the voluntary act of the insured:

Intemperance.—Death in a state of drunkenness, or from any accident or violence received while in that state, or from any
12 disease produced by or resulting from the occasional or habitual use of alcoholic or narcotic stimulants; and when there shall have been delirium tremens, or any injury to or impairment of the health from such use, this policy shall thereupon and thereby be wholly forfeited and terminated:

In each and every of the foregoing cases, this policy shall become and be null and void; but the company will, upon surrender and satisfactory release hereof within one year thereafter, return to the

assured the then net reserve upon this policy, computed upon the American table of mortality, and three per centum compound interest.

4th. That in every case in which this policy shall cease and determine or shall become and be null and void, all premiums paid and moneys or credits held on account of the same shall be forfeited to this company, except as hereinbefore provided.

5th. That no assignment of this policy shall be valid; unless made in writing endorsed hereon; and any claim against this company, arising under this policy, made by any assignee, shall be subject to satisfactory proof of interest in the life insured, in due form, and to any breach of the conditions of this contract by any of the parties hereto, whether such breach exist prior or subsequent to any such assignment; and such proof of interest shall be a condition precedent to any right of action on this contract by or on behalf of such assignee; and this company shall in no way be responsible for the validity of any assignment.

13 6th. That agents of the company have no power or authority to make, alter, change, or modify any of the terms, conditions, or agreements of this policy, or to waive forfeitures thereof; and that no alteration, change, modification, waiver or subsequent agreement whatever respecting this policy shall be binding on said company unless made in writing signed by the executive officers thereof.

7th. Table of paid-up insurance referred to in this policy and made a part thereof.

To ascertain the amount for which this policy will continue in force after three or more annual premiums have been paid, take the amount under the age at issue and the annual premium per $1,000 at which the policy was written, and opposite the figures showing the number of annual premiums paid,* and multiply it by the number of thousands of dollars insured by this policy.

Thus, the paid-up insurance for which a policy for $5,000, issued at age 35, would continue in force in case of failure to pay further premiums after the payment of fifteen annual premiums, is $374 \times 5 = $1,870; after the payment of twenty-five annual premiums is $582 \times 5 = $2,910.

(Here follows table marked p. 14.)

15 *The annual premium can be paid in semi-annual or quarterly installments only by special permission of the company; and if, after the payment of three or more annual premiums, one or more fractional installments be so paid on account of an annual premium, the paid-up insurance will be increased by a proportional part of the increase due to the payment of the annual premium, less fractions of a dollar.

Thus, the paid-up insurance, for which a policy for $2,500, issued at age 30, would continue in force after the payment of fifteen annual premiums is $340 \times 2.5 = $850. The payment of the sixteenth

annual premium would add $55 to this amount; but the payment of the first semi-annual installment of the sixteenth annual pre-ium will add only one-half of that amount, less fractions of a dollar, or $27, making the paid-up insurance, in case of the payment of fifteen annual premiums and one semi-annual installment of the sixteenth annual premium, $850+$27=$877.

Copy of Application for Insurance in the Connecticut Mutual Life Insurance Company of Hartford, Connecticut,

Which is the basis of and a part of the contract of insurance.

1. A. Name of the person whose life is proposed for insurance? Write the name in full. Archibald O. Smith.

B. Married? No.

C. Occupation? (To be stated specifically.) Present, dyer and cleaner of clothes; former, farmer.

16 D. Residence? Town or city, New Castle.

P. O. address, New Castle; county, Lawrence; State, Penn.

2. A. When and where were you born? On the 15th of July, 1859, in (State or county) Penn., U. S.

B. Your age at next birthday? 28 years.

3. A. How much insurance is desired? ($10,000) ten thousand dollars.

B. What form of policy is desired? Whole life.

C. To whom is this insurance to be made payable in case of loss? Archibald O. Smith.

D. Relationship to the life proposed? ——.

E. To whom is the policy or its cash value to be made payable, in case of maturity or surrender within the lifetime of the insured? Archibald O. Smith.

4. A. Is it desired to pay the premium annually? No. In semi-annual installments? Yes. In quarterly installments? No.

(If paid in semi-annual installments, an addition of two per cent., and if in quarterly installments, an addition of 3 per cent. will be made to the annual premium stated in this policy.)

B. Is it desired to make the annual premium fall due at some other date than that of the policy? Not later than date of Jan. 15th. If so, what date? January 15th, 1887.

5. A. Is there now any insurance on your life? Yes.

17 B. If in this company, state the No. of policy and amount? No. —, for $—. No. —, for $—.

C. If in other companies, state the name of each company or association, and amount insured in each? In the Fidelity Philadelphia Co., for $5,000. In the —— Co., for $—. In the —— Co., for $—. In the —— Co., for $—.

D. Has any company or association ever declined or postponed granting or reviving insurance on your life, either for any particular amount, or in any particular form? No. If so, state the name of each company or association, how long since, and for what cause? ——.

E. Has any opinion ever been sought from, or any consultation ever held with, any person as to whether your life was safely insurable, except as above mentioned? No. If so, what decision or opinion was then given? ——.

F. Is any application or negotiation for insurance upon your life in any company or association now pending? The Union Central are trying to insure me.

6. A. In what quantity and how frequently do you use beer, wine, or other alcoholic or narcotic stimulants? No stimulants of any kind; chew and smoke very moderately.

B. Describe particularly your past habits in this respect? Temperate.

C. Have you been, or are you now engaged in, or connected with, the manufacture or sale of intoxicating drinks or liquors? Never.

7. Are you now, or have you ever been, in any military or
18 naval service? No. If so, when, how long, and in what capacity? ——.

B. Have you ever applied for a pension? No. If so, when and on what grounds? ——. Was it granted? ——.

8. A. Have you ever changed your residence or travelled on account of your health? No.

B. When, where, and for how long have you resided out of the United States, or south of the southerly line of Tennessee? Never.

9. A. What is the present state of your health? Good.

B. Is there now existing any disease, disorder, infirmity, weakness, or malformation? No.

10. A. Have you ever had (answer yes or no opposite each) difficult, excessive, or scanty urination, or any disease or disorder of the genital or urinary organs?—No. Gravel or calculus?—No. Colic?—No. Small-pox?—No. Delirium tremens?—No. Consumption?—No. Neuralgia?—No. Disease of the heart?—No. Pleurisy?—No. Fistula?—No. Affection of liver?—No. Abscess?—No. Yellow fever?—No. Dropsy?—No. Apoplexy?—No. Habitual headache?—No. Palpitation?—No. Pneumonia?—No. Dyspepsia?—No. Affection of the spleen?—No. Sunstroke?—No. Erysipelas?—No. Cancer or any tumor?—No. Paralysis?—No. Dizziness or vertigo?—No. Enlarged veins?—No. Asthma?—No. Chronic diarrhœa?—No. Affection of hearing, speech, or eyesight?—No. Syphilis?—No. Scrofula?—No. Insanity?—No. Loss of consciousness?—No. Aneurism?—No. Habitual cough?—No. Piles?—No. Swelling of the feet, hands, or eyelids?—No. Gout?—No. Spitting of blood?—No. Epilepsy?—No. Fits?—No. Bronchitis?—No. Shortness of breath?—No. Jaundice?—No. Any personal injury?—No.

19 State how frequently; the date, character, and duration of each, and its effect upon your health? ——.

B. Have you had rheumatism? No. How many attacks? ——. Duration? ——. In what years? ——. Was it inflammatory? ——. Parts affected? ——. Accompanied by cough, shortness of breath, pain in the chest, or palpitation of the heart? ——.

C. Have you a rupture? No. Is it single or double? ——. Do you now wear a truss, and agree to do so habitually? ——.

D. Have you been successfully vaccinated? Yes.

11. A. For what else have you consulted with, or been attended by, a physician or surgeon during the past ten years? Never had any serious sickness.

B. Give dates, duration, and effect on health? Nothing except cold and a little sore throat.

C. Name and residence of such physician or surgeon? Dr. Donor prescribed for cold once.

D. Of your usual physician? In father's family, James Wallace.

12. A. Living?

	Age.	Condition of health.
Paternal grandfather	——	——
Paternal grandmother	——	——
Maternal grandfather	——	——
Maternal grandmother	——	——
Father	59	Good.
Mother	53	Good.
How many brothers living? Two	22	Good.
	18	Good.
How many sisters living? One	23	Good.

20 Dead?

	Age.	Cause of death, length of sickness, previous health.
Paternal grandfather } Paternal grandmother }	Old	My father's parents both died old in Ireland.
Maternal grandfather	——	Don't know; died in England.
Maternal grandmother	73	Old age.
Father	——	
Mother	——	
How many brothers dead? One	28	Hernice.
How many sisters dead? One		In infancy.

B. How many of your uncles and aunts have died or suffered from cancer, consumption, insanity, apoplexy, paralysis, or heart disease? Not to my knowledge.

C. On which side, and of which diseases? ——.

D. Which parent do you resemble? Father.

13. Is there any fact relating to your physical condition, personal or family history, or habits, which has not been stated in the answers to the foregoing questions, and with which the company ought to be made acquainted? No.

14. Have you reviewed the written answers to the above questions, and are you sure that they are correct and true? Yes.

It is hereby declared and warranted that the above are in all respects fair and true answers to the foregoing questions; and it is agreed by the undersigned that this application and the several answers, warranties, and agreements herein contained shall be the basis of, a part of the consideration for, and a part of the contract of insurance, and that no statement or declaration made to any
21 agent, solicitor, canvasser, examiner, or any other person, and not contained in this application, shall be taken or considered as having been made to, or brought to the notice or knowledge of the company, or as charging it with any liability by reason thereof, and that if there be, in any of the answers herein made, any fraud, untruth, evasion, or concealment of facts, then any policy granted upon this application shall be null and void, and all payments made thereon shall be forfeited to the company. It is agreed that the policy hereby applied for shall, if granted, be held to be issued and delivered at Hartford, in the State of Connecticut, and shall be in all respects construed and determined in accordance with the laws of that State; and that the provisions in said policy for its continuance as paid-up insurance for a specified amount in case of failure to pay premiums, are and shall be in substitution for and in waiver of the rights of all parties hereto under any law of any State relating to the lapse or forfeiture of policies of life insurance.

Dated at New Castle this 13th day of January, 1887.

ARCHIBALD O. SMITH.

(Signature of the person or persons for whose benefit the insurance is to be effected. Write the names in full.)

ARCHIBALD O. SMITH.

(Signature of the person whose life is proposed for insurance. Write the name in full.)

Witness to the signature hereof:

A. K. WYLIE.

Please notice.

Notices of premiums falling due are sent as regularly as possible, not as a matter of agreement, but for convenience only, and
22 without any responsibility for omission or miscarriage.

Blanks for the several certificates required to be made in proof of death will be furnished upon request.

Statute of Connecticut Respecting Policies of Insurance Issued for the Benefit of Married Women.

Any policy of life insurance, expressed to be for the benefit of a married woman, or assigned to her, or in trust for her, shall inure to her separate use, or, in case of her decease before payment, to the use of her children, or of her husband's children, as may be provided in such policy; provided that if the annual premium on such

policy shall exceed three hundred dollars, the amount of such excess, with interest, shall inure to the benefit of the creditors of the person paying the premium; but if she shall die before the person insured, leaving no children of herself or husband, the policy shall become the property of the person who has paid the premiums, unless otherwise provided in such policy.

Table of Cash Values to be Paid upon Surrender of this Policy in Accordance with its Terms and Made a Part Thereof.

To ascertain the cash value, take the value for $1,000, as given opposite the age at issue in the column headed by the number of years the policy has been in force, and multiply it by the number of thousands of dollars insured under the policy.

Thus, the cash value of a policy for $20,000, issued at age 35 at the end of 15 years is $222×20=$4,440; at the end of 30 years is $504×20=$10,080, &c.

Age at issue.	Premium per $1,000.	Cash values per $1,000 at end of years stated.												Age at issue.
		10 years.	15 years.	20 years.	25 years.	30 years.	35 years.	40 years.	45 years.	50 years.	55 years.	60 years.	65 years.	70 years.	
20	$18 00	$74	$125	$184	$250	$326	$406	$488	$570	$646	$714	$777	$835	$885	20
21	18 40	77	130	191	260	337	418	501	582	658	725	788	845	893	21
22	18 80	80	135	198	270	348	431	514	595	670	736	798	854	902	22
23	19 23	83	140	206	280	359	443	527	608	681	747	808	863	912	23
24	19 67	86	146	214	290	371	456	540	620	692	758	818	872	922	24
25	20 14	90	152	222	300	383	468	553	632	703	769	828	880	954	25
26	20 63	94	158	230	310	395	481	566	644	714	779	838	888	1,060	26
27	21 15	98	164	238	320	407	494	578	656	725	789	848	898	-------	27
28	21 69	102	170	247	331	419	507	590	667	736	800	857	908	-------	28
29	22 26	106	177	256	342	431	519	602	678	747	810	866	918	-------	29
30	22 85	111	184	265	353	443	532	614	689	758	820	875	952	-------	30
31	23 48	116	191	275	364	455	544	626	700	768	830	884	1,000	-------	31
32	24 14	121	198	285	375	468	556	638	711	778	840	893	-------	-------	32
33	24 84	126	206	295	387	480	568	649	722	789	849	903	-------	-------	33
34	25 58	131	214	305	399	492	580	660	733	800	858	914	-------	-------	34
35	26 35	136	222	315	410	504	592	671	743	810	867	949	-------	-------	35
36	27 17	141	230	325	422	516	603	682	754	820	876	1,000	-------	-------	36
37	28 04	147	238	336	433	528	614	692	764	830	886	-------	-------	-------	37
38	28 95	153	247	346	445	540	625	703	775	839	897	-------	-------	-------	38
39	29 92	159	256	357	456	551	636	714	785	848	908	-------	-------	-------	39
40	30 94	165	265	367	468	562	647	725	796	857	946	-------	-------	-------	40
41	32 03	172	274	378	479	573	657	735	806	866	1,000	-------	-------	-------	41
42	33 18	178	283	388	490	584	668	745	816	877	-------	-------	-------	-------	42
43	34 40	185	292	399	501	594	678	756	826	888	-------	-------	-------	-------	43
44	35 70	191	300	409	512	604	689	767	835	900	-------	-------	-------	-------	44

Age at issue.	Premium per $1,000.	Cash values per $1,000 at end of years stated.												Age at issue.
		10 years.	15 years.	20 years.	25 years.	30 years.	35 years.	40 years.	45 years.	50 years.	55 years.	60 years.	65 years.	70 years.	
45	$37 08	$198	$309	$419	$522	$615	$699	$778	$844	$941	.....	.....	.....	.....	45
46	38 55	205	318	429	532	625	710	788	854	1,000	.....	.....	.....	.....	46
47	40 12	211	327	439	542	635	720	798	865	.....	.....	.....	.....	.....	47
48	41 78	218	336	449	552	645	731	808	877	.....	.....	.....	.....	.....	48
49	43 56	224	345	459	561	655	741	817	890	.....	.....	.....	.....	.....	49
50	45 45	231	354	468	571	665	752	827	934	.....	.....	.....	.....	.....	50
51	47 46	237	362	477	580	675	763	837	1,000	.....	.....	.....	.....	.....	51
52	49 60	244	370	485	590	685	773	848	.....	.....	.....	.....	.....	.....	52
53	51 89	250	378	494	600	696	783	860	.....	.....	.....	.....	.....	.....	53
54	54 33	257	386	502	609	707	793	874	.....	.....	.....	.....	.....	.....	54
55	56 93	263	393	511	618	718	803	925	.....	.....	.....	.....	.....	.....	55
56	59 70	269	400	519	628	729	813	1,000	.....	.....	.....	.....	.....	.....	56
57	62 56	274	407	527	638	739	825	.....	.....	.....	.....	.....	.....	.....	57
58	65 83	280	414	536	648	749	839	.....	.....	.....	.....	.....	.....	.....	58
59	69 21	285	421	545	659	759	855	.....	.....	.....	.....	.....	.....	.....	59
60	72 83	290	427	553	670	769	912	.....	.....	.....	.....	.....	.....	.....	60
61	76 70	295	434	562	680	780	1,000	.....	.....	.....	.....	.....	.....	.....	61
62	80 85	299	441	571	690	793	.....	.....	.....	.....	.....	.....	.....	.....	62
63	85 29	303	448	581	700	808	.....	.....	.....	.....	.....	.....	.....	.....	63
64	90 04	307	455	591	711	825	.....	.....	.....	.....	.....	.....	.....	.....	64
65	95 14	310	462	602	722	894	.....	.....	.....	.....	.....	.....	.....	.....	65

24 In the Court of Common Pleas of Lawrence County, Pennsylvania.

C. H. AKENS, Executor in Estate of Archibald O. Smith, Deceased,
vs.
THE CONNECTICUT MUTUAL LIFE Insurance Company of Hartford, Conn.
No. —. March Term, 1888.

LAWRENCE COUNTY, *ss:*

C. H. Akens, executor of the last will and testament of Archibald O. Smith, late of New Castle, said county, deceased, the plaintiff in this case, by D. B. Kurtz, his attorney, complains of The Connecticut Mutual Life Insurance Company of Hartford, Conn., the defendants in this case, who have been summoned to answer the plaintiff in an action of assumpsit, and states—

That the demand of the said plaintiff against the said defendant in this suit is ten thousand dollars, with interest from the 15th day of April, A. D. 1887.

That on the 14th day of January, A. D. 1887, the defendant- made and delivered to the said Archibald O. Smith their policy of insurance, dated the day and year aforesaid and bearing number 179,555, a true copy of which policy is hereto attached and filed in court, whereby the defendants, in consideration of the application for said insurance and of the several answers, warranties, and agreements in said application contained, and of the annual premium of two hundred and eleven and $\frac{50}{100}$ dollars, to be paid to them on the 14th day of January, 1887, and on or before the same date in every year during the continuance of the said policy, did thereby insure the life of the said Archibald O. Smith, for the term of his
25 natural life, in the sum of ten thousand dollars, to be paid to his legal representatives thirty days after due notice and satisfactory evidence of the death of the said insured, as by the said policy and copy thereof herewith filed, relation being thereto had, will more fully appear; and the plaintiff in fact says that after the execution and delivery of said policy and while the same was in full force and effect, afterwards, to wit, on the 23rd day of February, A. D. 1887, at the county aforesaid, the said Archibald O. Smith died, having paid the said premiums as in the said policy provided and in all respects observed, performed, fulfilled, complied with, carried out, kept, and obeyed all and singular the contracts, covenant, warranties, agreements, stipulations, conditions, matters, and things which were upon his part to be observed, performed, fulfilled, complied with, carried out, kept, and obeyed according to the provisions of the said policy, of all which the said defendants afterwards, to wit, on the 16th day of March, A. D. 1887, had due and sufficient notice; and the plaintiff further says that the said Archibald O. Smith before his death, to wit, on the 19th day of February, A. D. 1887, made and published his last will and testament in writing, which after his death was duly proved and filed in the office

of the register of wills at New Castle, said county, where it now remains of record, and entered and recorded in Will Book, vol. 4, page 237, in said office, wherein and whereby he appointed the plaintiff the executor of that his last will and testament, and letters testamentary were thereon duly granted to the plaintiff by the register of said county on the 7th day of March, A. D. 1887, as will appear upon reference to the Register's Docket of said county, vol. 5, page 319, and

26 by reason of the premises the defendants became indebted to and liable to pay to the plaintiff, as the legal representative of the said Archibald O. Smith, deceased, the sum of ten thousand dollars, with interest from the 15th day of April, A. D. 1887, according to the terms of the said policy; and although good and sufficient proof was then and there, to wit, on the 16th day of March, A. D. 1887, made to the defendants of the death of the said Archibald O. Smith, and all other matters aforesaid, and the plaintiff has always since the death of the said Archibald O. Smith performed, kept, and obeyed all the duties incumbent upon him as executor aforesaid according to the tenor and effect of the said policy, and although the period of thirty days from the date of the notice and proof to the defendants of the death of the said Archibald O. Smith has long since elapsed, the said plaintiff in fact says that the defendants have broken their promises, covenants, and agreements, and have not paid to the plaintiff the said sum of ten thousand dollars nor any part thereof, though often requested so to do, but have hitherto wholly neglected and refused and still do neglect and refuse so to do, to the damage of the plaintiff twenty thousand dollars, and therefore he brings this suit, &c.

D. B. & L. T. KURTZ,
Att'ys for Pl'tff.

27 (*Summons.*)

LAWRENCE COUNTY, *ss:*

The Commonwealth of Pennsylvania to the sheriff of said county, Greeting:

We command you that you summon the Connecticut Mutual Life Insurance Company of Hartford, Conn., so that it be before our court of common pleas, to be holden at New Castle, in and for said county, on the first Monday of March next, there to answer C. H. Akens, executor in the estate of Archibald O. Smith, in action of assumpsit; and have you then and there this writ.

Witness the Hon. Aaron L. Hazen, president judge of our said court, at New Castle, this 14th day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

JOSEPH H. GILLELAND,
Prothonotary.

I hereby depute the sheriff of Philadelphia county, Penna., to serve the within summons and statement.

WM. G. WARNOCK,
Sheriff of Lawrence Co.

Served The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, the defendant insurance company, incorporated under the laws of the State of Connecticut and having an agency established in the city of Philadelphia, in the State of Pennsylvania, under the laws thereof, by giving, January 18th, 1888, at the office the said agency, No. 530 Walnut street, in said city, a true and attested copy of the within writ to Walter H. Tilden, the agent
28 designated by said company under the laws of the State of Pennsylvania to receive service of process, and making known to him the contents thereof.

So answers—

JAMES F. HEORON,
Deputy Sheriff.

Louis Rementer, being duly sworn according to law, deposes and says that the facts set forth in foregoing return are true.

LOUIS REMENTER.

Sworn and subscribed to before me this 21st day of January, A. D. 1888.

[L. S.] C. P. ROBERTS, *Dep'ty Pr'y.*

In the Court of Common Pleas of Lawrence County, Pennsylvania.

C. H. AKENS, Executor in Estate of Archibald O. Smith, Deceased,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.
No. 38. March Term, 1888.

Served on the Connecticut Mutual Life Insurance Company of Hartford, Conn., the defendants, an insurance company incorporated under the laws of the State of Connecticut and having an agency established in the city of Philadelphia, in the State of Pennsylvania, under the laws thereof, the papers purporting to be true copies of the statement filed in above-stated case, and of the contract or policy of insurance on which suit is brought, received in company
29 with the summons in above case and bearing endorsement thereon as such true copies, by giving and delivering the same to Walter H. Tilden, the agent designated by said defendant company under the laws of the State of Pennsylvania to receive service of all process for them, on January 18th, A. D. 1888, at the office of said agency, No. 530 Walnut street, in said city of Philadelphia, and making known to him what said papers purported to be.

LOUIS REMENTER.

L. Rementer, being duly sworn according to law, deposes and says that facts set forth in the foregoing are true and correct.

C. B. ROBERTS, *Dep'y Pr'y.*

STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

Sworn to and subscribed before me this 1st day of February, A. D. 1888.

[L. S.] C. B. ROBERTS, *Dep'y Pr'y.*

Filed Feb'y 4, 1888.

Petition and affidavit for removal of above-stated case *case* from common pleas court of Lawrence county, Penna., into the circuit court of the United States for the western district of Penna.

30 In the Court of Common Pleas of Lawrence County, State of Pennsylvania.

C. H. AKENS, Executor in Estate of Archibald O. Smith, Deceased,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT. } No. 38, March Term, 1888.

To the honorable the judges of said court:

The petition of the undersigned, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, a body corporate under and by the laws of the State of Connecticut and a citizen of said State, having its chief office for the transaction of its business at the city of Hartford, in the county of Hartford, in said State of Connecticut, respectfully represents:

1. That a suit of a civil nature at law, to wit, an action of assumpsit upon an alleged contract of life insurance (being a policy of life insurance dated Jan'y 14, 1887, at Hartford, State of Connecticut) between your petitioner, as insurer, and one Archibald O. Smith (plaintiff's testator above named), now and since the date of said alleged contract of life insurance deceased, has been brought by C. H. Akens, executor of said Archibald O. Smith, as plaintiff, against your petitioner, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, as defendant, at No. 38 of March term, 1888, of your honorable court, by the filing of a præcipe for summons in assumpsit, a copy of the policy of insurance sued
31 upon, a statement under the act of assembly of Pennsylvania known as the procedure act, approved May 25th, 1887, the teste of the writ issued in said case being January 14th, 1888, upon which date also were filed the præcipe, copy of policy sued upon, and statement referred to, and the service of the said writ, together with a copy of the instrument or policy of insurance sued upon and a copy of the statement aforesaid upon your petitioner's duly authorized agent for service for the State of Pennsylvania, having been made January 18th, 1888, and the return day of said writ being the first Monday of March, A. D. 1888, as all of which by reference to the record of the case in the files of your honorable court will more fully and at large appear; which last-mentioned date is the time at or by which your petitioner, the defendant in said suit,

is required by the laws of the State of Pennsylvania or the rules of your honorable court to appear and answer the declaration or complaint of the plaintiff, and which suit is still pending.

2. That Archibald O. Smith aforesaid, now deceased, at the time of the alleged contract of insurance between him and your petitioner and at the time of his death, which occurred in Feb'y, 1887, and for some years prior thereto, was a citizen of the State of Pennsylvania, resident in Lawrence county of said State, and within the western district thereof for the United States, and that C. H. Akens aforesaid, at the time of bringing this suit, was and is now and for some years last past has been a citizen of the State of Pennsylvania, resident in Lawrence county of said State, and within the western district thereof for the United States; that your petitioner is a body corporate under and by the laws of the State of Connecticut, and
32 was long before and at the time of bringing of this suit and since then continuously and is now a citizen of said State of Connecticut, having its chief office for the transaction of its business at the city of Hartford, in said State of Connecticut, and that the amount in dispute in this case, exclusive of interest and costs, exceeds the sum of two thousand dollars.

3. That your petitioner has not yet appeared in the said suit, nor has the time for it to appear in the same arrived, nor will it arrive until March 5th, 1888, but the suit is one pending in your honorable court and is a suit or controversy between the plaintiff, a resident and citizen of the State of Pennsylvania and within the western district for the United States thereof at the time of bringing the same and since then always and now, and your petitioner, a non-resident defendant, being at the time of the bringing of said suit and since then always and now a citizen of the State of Connecticut; and your petitioner, being desirous of removing said suit from your honorable court into the circuit court of the United States for the western district of Pennsylvania, being the circuit court embracing within its jurisdictional limits of Pennsylvania the county of Lawrence, where said suit was brought and is pending, makes and herewith files in this court its bond, with good and sufficient sureties, for its entering in such circuit court on the first day of its next sessions a copy of the whole record in such suit and for paying all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and also for its there appearing and entering special bail in such suit if special bail was originally requisite therein, and it prays of your
33 honorable court to accept said petition and bond and to proceed no further in said suit.

And your petitioner will ever pray.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT,

By JOHN W. TAYLOR, *Vice-president.*

M. McCONNELL, *Attorney for Petitioner.*

Attest: DANIEL H. WELLS,

Assistant Secretary of the Connecticut Mutual Life Insurance Company of Hartford, Connecticut.

STATE OF CONNECTICUT, *County of Hartford, City of Hartford,* } ss:

Before me, a notary public in and for the county of Hartford, in the State of Connecticut, personally appeared John M. Taylor, who, being duly sworn, deposes and says that he is the vice-president of and in charge of the legal department of the petitioner corporation above named, and that he hath been authorized and directed by the managers and directors of the petitioner corporation above named to file in its name and behalf in the court of common pleas of Lawrence county, Pennsylvania, the above and foregoing petition, and that the facts therein stated and contained are correct and true.

JOHN M. TAYLOR.

Sworn and subscribed before me this 20th day of February, A. D. 1888.

NATHAN F. PECK,
[L. S.] *Notary Public.*

34 STATE OF CONNECTICUT, *Office of the Secretary,* } ss:

I, Leverett M. Hubbard, secretary of the said State of Connecticut and keeper of the seal thereof, do hereby certify that Nathan F. Peck, Esq., was, on the 11th day of Jan'y, A. D. 1888, duly appointed and commissioned a notary public in the said State from the date of said commission until the first day of February, A. D. 1890, and that to his acts and attestations as such full faith and credit are and ought to be given in and out of court.

In testimony whereof I have hereunto set my hand and affixed the seal of said State, at Hartford, this 29th day of Feb'y, A. D. 1888.

[L. S.] LEVERETT M. HUBBARD, *Secretary.*

(Bond accompanying petition for removal from common pleas court of Lawrence county, Penna., into the circuit court of the United States for western district of Penna.)

In the Common Pleas Court of Lawrence County, Pennsylvania.

C. H. AKENS, Executor in Estate of Archibald O. Smith, Deceased,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, COMNECTICUT. } No. 38. March Term, 1888.

Bond.

35 Know all men by these presents that we, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, a corporation incorporated under and by the laws of the State of Connecticut and having its chief office and place of business at Hartford, in the State of Connecticut, and a citizen of said State, as

principal, and John McKinley and William N. Aiken, citizens of the State of Pennsylvania, resident within the county of Lawrence, in said State, as sureties, are jointly and severally bound unto C. H. Akens, executor in estate of Archibald O. Smith, deceased, of the county of Lawrence, in the State of Pennsylvania, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said C. H. Akens, executor in the estate of Archibald O. Smith, deceased, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we do bind ourselves, our successors, heirs, executors, and administrators, and each of them, firmly by these presents.

The condition of this obligation is such that if the said The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, which is the defendant in an action or suit instituted by the aforesaid C. H. Akens, executor in the estate of Archibald O. Smith, deceased, as plaintiff, in the common pleas court of Lawrence county, State of Pennsylvania, at No. 38, March term, 1888, of said court, and there now depending, and which company is about petitioning the said court of common pleas of Lawrence county, Pennsylvania, for the removal of said action or suit from said court into the circuit court of the United States for the western district of Pennsylvania, shall and will well and truly enter or cause to be entered in the circuit court of the United States for the western district of Pennsylvania, on the first day of its next session, a copy
36 of the record in such suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto and shall also appear and enter special bail in said suit if special bail was originally requisite therein, then this obligation to be null and void; otherwise to be and remain in full force and virtue.

In witness whereof the said The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, has, at Hartford, Connecticut, caused its common or corporate seal to be hereto affixed, duly attested by the secretary of said company, and the said John McKinley and William H. Aiken have hereunto set their hands and seals this twenty-ninth (29) day of February, A. D. one thousand eight hundred and eighty-eight.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By JOHN M. TAYLOR, *Vice-president.* [L. S.]

Attest: DANIEL H. WELLS,
Assistant Secretary of the Connecticut Mutual Life Insurance Company of Hartford, Connecticut.

JOHN McKINLEY. [SEAL.]
WILLIAM N. AIKEN. [SEAL.]

Attest: A. K. WYLIE.

STATE OF PENNSYLVANIA, } ss:
County of Lawrence, }

Before me, a notary public in and for the county of Lawrence, State of Pennsylvania, personally came John McKinley and William N. Aiken, the sureties named in the foregoing bond,
37 who, both being first duly sworn, depose and say that each of them are residents of the county of Lawrence, in the State of Pennsylvania, and are property-holders and freeholders therein, and that each is worth the sum of one thousand dollars over and above his debts and liabilities and exclusive of property or the amount of property by law exempt from execution, and that each has real-estate property free from all incumbrances, liens, situate in the county of Lawrence, State of Pennsylvania, which, in the event of a judgment against them, would be liable to execution, exclusive of property exempt by law from execution, of the value of one thousand dollars and upwards.

JOHN McKINLEY.
WM. N. AIKEN.

Sworn and subscribed before me this 3rd day of March, A. D. 1888, at New Castle, Penna.

[L. S.] JOHN S. TAGGART,
Notary Public.

Filed March 3, 1888.

(Order accepting petition and bond and directing removal of case to circuit court of the United States for the western district of Pennsylvania.)

Common Pleas of Lawrence County, Pennsylvania.

C. H. AKENS, Executor in Estate of Archibald O. Smith, Deceased,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.
} No. 38. March Term, 1888.

38 And now, to wit, March 5th, 1888, being the first day of the March term, 1888, common pleas court holden for Lawrence county, State of Pennsylvania, Malcolm McConnell, Esq., appearing in behalf of the petitioner, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, the defendant in the above-entitled suit, and Mess. D. B. & L. T. Kurtz, Esqs., appearing on behalf of the plaintiff in said suit, was presented to the court the petition (with the accompanying bond), which petition and bond were filed among the records in this suit on the 3rd of March, 1888, of the petition for a removal of this suit from the court of common pleas of Lawrence county into the circuit court of the United States for the western district of Pennsylvania, and the court was moved by the attorney for the petitioner to accept said petition and bond, and to proceed no further in the said suit, and to order that this

said suit be removed into the circuit court of the United States for the western district of Pennsylvania.

Whereupon, after consideration of said motion, the court adjudge said bond to be good and sufficient and accept said petition and bond and order and direct that no further proceedings be had in this court in said suit, and that the same be removed into the circuit court of the United States for the western district of Pennsylvania.

BY THE COURT.

39 STATE OF PENNSYLVANIA, } ss:
Lawrence County, }

I, Joseph H. Gilleland, prothonotary of the court of com-
[L. S.] mon pleas of said county, in said State, do hereby certify that the foregoing is a true and correct copy of the record and of the papers on file, so full and entire as the same remains of record and file in my office.

Witness my hand and the seal of said court, at New Castle, Pa., this 5th day of March, A. D. 1888.

JOSEPH H. GILLELAND, *Prothonotary.*

40 (*Affidavit of Defence.*)

In the Common Pleas Court of Lawrence County, State of Pennsylvania.

C. H. AKENS, Executor in Estate of Archibald O. Smith, Dec'd,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.
} No. 38 of March Term, 1888.

STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

Before the undersigned, a notary public in and for the county of Allegheny, in the State of Pennsylvania, this 31st day of January, A. D. 1888, personally appeared before me James H. Knapp, who, being first duly sworn, doth depose and say that he is an agent of the defendant in the above-entitled suit, to wit, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, duly authorized in its behalf to make for it this affidavit of defence to the claim of the plaintiff aforesaid in this case, and that the defendant corporation has a full, just, and true defence to the whole of the claim aforesaid in this case, which defence is as follows, viz:

First. That even if the policy of insurance sued upon in this case was originally at the time of its issuance procured by the
41 plaintiff's testator, Archibald O. Smith, from the defendant *bona fide* and not for the purpose of shortly thereafter attempting to use the same fraudulently, and even if all the answers in the said Archibald O. Smith's application, being a part of said policy, are all correct and true, both of which contingencies are here and now neither admitted or denied, but the raising of questions

as to *the* which hereafter by supplemental affidavit in the pleadings to be filed in the case is not waived, but expressly reserved on behalf of the defendant corporation, the policy of insurance sued upon in this case has become null and void by reason of the fact, which the defendant corporation charge- (and fully expects and believes it will clearly prove at the trial of this case), that the plaintiff's testator'-, the said Archibald O. Smith's, death on the 23rd day of February, A. D. 1887, was a self-destruction or suicide by the said Archibald O. Smith, to wit, the direct result of a poison, to wit, laudanum, administered to himself by himself shortly, to wit, on or about Feb'y —, 1887, before his death, and was so administered to or taken by him for the purpose of causing and producing his death, and that the same did cause and produce his death, and that the self-destruction of the said Archibald O. Smith *were* contrary to and in violation of the express terms of the policy sued upon, to wit, the portion thereof on second page of said policy after the word suicide on said page, thereby making the said policy wholly null and void.

JAMES H. KNAPP,
Ag't Conn. Mutual Life Ins. Co. at Pittsburgh.

Sworn and subscribed to, after having been read by the defendant, this 31st day of Jan'y, A. D. 1888.

JAMES R. STERRETT,
[L. S.] *Notary Public.*

Filed May 1, 1888.

H. D. GAMBLE, *Clerk.*

42 (*Defendant's Plea and Order for Placing on Issue Docket at May Term*, 1889, *Trial List.*)

C. H. AKENS, Executor of A. O. Smith, Dec'd, a Citizen of the State of Penna. and Residing with- the Western District Thereof, Plaintiff,
vs.
THE CONNECTICUT MUTUAL LIFE INS. Company of Hartford, Connecticut, Defendant.

No. —. May Term, 1888. U. S. C. C., W. D. of Penna.

And now, to wit, March 6th, 1889, the defendant pleads non-assumpsit the aforesaid matter set forth in the affidavit of defence, with leave to add, alter, or amend at bar.

W. S. PURVIANCE,
Att'y for Defendant.

To H. D. Gamble, Esq., clerk U. S. C. C.:

Please place above-entitled case on the issue docket and trial list for May term, 1889.

W. S. PURVIANCE,
Att'y for Defendant.

March 6th, 1889.

Filed March 6, 1889.

H. D. GAMBLE, *Clerk.*

43 (*Replication.*)

In the Circuit Court of the United States for the Western District of Pennsylvania.

C. H. AKENS, Executor of Archibald O. Smith, Deceased,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company of Hartford, Connecticut. } No. 17. May Term, 1888.

Pleas—Non-assumpsit and the special matter set out in affidavit of defence, &c.

Now, April 2nd, 1889, the said plaintiff as to the plea of the said defendant by him first above pleaded, to wit, "non-assumpsit," and whereof he has put himself upon the country, does the like.

And the said plaintiff as to the plea specially set out in the affidavit of defence filed, and secondly by him above pleaded, says that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says—

That the death of plaintiff's testator, the said Archibald O. Smith, on the 23rd day of February, A. D. 1887, was not a self-destruction or suicide by the said Archibald O. Smith, nor was his death aforesaid the direct result of laudanum or other poison, nor was any laudanum or other poison administered to himself by himself shortly, to wit, on or about February —, 1887, before his
44 death, nor was any laudanum or other poison administered or taken by him, the said Archibald O. Smith, for the purpose of causing or producing his death, nor was his death caused or produced by laudanum or other poison, and the death of the — Archibald O. Smith was not a self-destruction or suicide, nor was the same contrary to or in violation of the terms of the policy sued upon, to wit, the condition or portion thereof on second page of said policy, opposite the word suicide on said page thereof, making the said policy wholly null and void, as specified in said affidavit of defence; and this the said plaintiff prays may be inquired of by the country, &c.

And even if the death of the said Archibald O. Smith was a self-destruction, which is not admitted, but wholly denied, the same was the direct result of disease or of accident occurring without the voluntary act of the said Archibald O. Smith and without any purpose or intention of self-destruction or suicide, and the same was not contrary to or in violation of any of the terms of the said policy sued upon, and this the said plaintiff is ready to verify; whereof he prays judgment and his damages by him sustained on occasion of the non-performance of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him, &c.

And even if the death of the said Archibald O. Smith, on the 23rd day of February, 1887, was a self-destruction by the said Archibald O. Smith, to wit, the direct result of a poison, to wit, laudanum, administered to himself by himself shortly, to wit, on or about February —, 1887, before his death, and was so administered and taken by him for the purpose of causing and procuding his death, and the same did cause and produce his death, all of which is hereby
45 wholly and specially denied and in nowise or in any part admitted, the reasoning faculties of the said Archibald O. Smith at the time of so taking and administering the said laudanum or other poison as aforesaid with the purpose aforesaid were so far impaired that he was not able to understand the moral character, the general nature, consequence, and effect of the act he was about to commit, and the same was not contrary to or in violation of the terms of the policy of insurance sued upon, and this the said plaintiff is ready to verify; whereof he prays judgment and his damages by him sustained on occasion of the non-performance of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him, &c.

And even if the death of the said Archibald O. Smith was a self-destruction by the said Archibald O. Smith, to wit, the direct result of a poison, to wit, laudanum, administered to himself by himself shortly, to wit, on or about February —, 1887, before his death, and was so administered and taken by him for the purpose of causing and producing his death and the same did cause and produce his death, all of which is denied and to no extent whatever admitted, he, the said Archibald O. Smith, was at the time of so taking and administering the said laudanum or other poison as aforesaid with the purpose aforesaid impelled thereto by an insane impulse, which he had not the power to resist, and the same was not contrary to or in violation of the terms of the policy upon which this suit is brought, and this he, the said plaintiff, is ready to verify; wherefore he prays judgment and his damages by him sustained on occasion of the non-performance of the said several promises and undertakings in the said declaration mentioned, to be adjudged to
46 him, &c.

D. B. & L. T. KURTZ.
Att'ys for Pl'tff.

Filed April 10, 1889.

H. D. GAMBLE, *Clerk.*

(*Minutes of Trial.*)

In the Circuit Court of the United States for the Western District of Pennsylvania.

C. H. AKEN, Ex'r of A. O. Smith, Dec'd,
vs.
CONNECTICUT MUTUAL LIFE INS. CO. } No. 17. May Term, 1888.

The above-entitled cause being at issue, a jury was, on this 14th day of May, 1889, called, to wit, W. R. Page, Lorenzo Everett, J. B.

Griggs, J. C. Conn, James Birmingham, A. E. Beaman, Joseph Throckmorton, John V. Swearingen, A. B. Filson, George P. Strome, Martin Nicholls, and E. J. Thompson, twelve good and lawful men, who were duly empannelled, balloted for, and sworn to well and truley try this issue joined as above set forth, and the trial thereof proceeded with until the hour of adjournment.

May 15.—Trial proceeds; evidence closed and counsel submit and argue points for instructions until the hour of adjourn-
47 ment.

May 16.—Trial proceeds; counsel address the jury, closing at 3.15 p. m., when the court (McKennan, cir. J.) charges the jury, whereupon they retire to consult.

May 18.—The jury return a verdict for the plaintiff for the sum of $11,251.66.

Filed May 18, 1889.

H. D. GAMBLE, *Clerk.*

(*Charge of the Court.*)

C. H. AKENS, Executor,
vs.
CONNECTICUT MUTUAL LIFE INS. CO. } Fourth Day.

Charge of the court.

MCKENNAN, *J.:*

GENTLEMEN OF THE JURY: On the 14th day of January, 1887, the Connecticut Mutual Life Insurance Company of Hartford, Connecticut, entered into a contract with Archibald O. Smith by which it agreed at his death to pay to his legal representatives the sum of $10,000 in consideration of the payment to it of $211 annually during the period of his life, and that policy was delivered to Smith a short time after that date.

48 It appears that the insured lived until the 23rd day of February following (a little over a month after the date of this policy), when he died. Due proofs of his death, as required by the policy, were furnished to the company and a demand made for the payment of the amount of the policy. It appears further from these proofs of death that the cause of his death was certified to by the physician who waited upon him in his last illness, which, I believe, is stated to be by the administration of laudanum taken by himself. Thereupon the company refused to make payment, alleging that in the manner of the death of the insured there was a breach of one of the conditions of this policy, by which the policy was voided and they were relieved from any liability. So far there is no controversy between the parties.

That defence is now made by the defendant upon the trial here, to wit, that Mr. Smith by the manner of his death voided this policy and relieved the company from any liability under it.

This is the condition of the policy which it is alleged he violated: "The self-destruction of the assured in any form except upon proof

the same is the direct result of disease or of accident occurring without the voluntary act of the assured," and the sole question of fact now before you to determine is whether that condition of the policy was violated or not.

It is in evidence that some four or five days before the death of the assured, the Friday before, he sent for a physician, claiming to be unwell and to require treatment. The physician called,
49 made an examination of the insured, and came to the conclusion that he had no physical ailment requiring any special treatment; that there was nothing the matter with his heart, of which the insured complained, and that there was nothing in any other pain from which he said he was suffering that required any treatment at all. In other words, that his indisposition was mental and not physical. He was laboring under depression. The physician says he gave him some medicine and local applications for the mere purpose of moral effect—that is, for the purpose of relieving the mental depression, but he further testifies that during the course of his visits the insured acknowledged to him that he had taken laudanum, and, in the judgment of the physician, that was the cause of his death. Under these circumstances, the insurance company, the defendant, alleges that the insured took his own life by the use of a poison sufficient to produce that result; that he was, therefore, guilty of suicide, and for that reason the company is not liable for the amount claimed in this suit.

In answer the plaintiff in this suit alleges that if the insured did commit self-destruction, as was testified by the physician, he was in a condition of mind that rendered him irresponsible for the act thus committed by him, and that, notwithstanding that act, the company is liable for the amount of this policy. That is the single issue for your determination.

What was the condition of the mind of this man at the time the cause of his death occurred as to his responsibility for what he did?

50 On the part of the defendant it is alleged that the insured committed suicide—that is, he used means to take away his life or tending to take away his life, and that they were appropriate to that purpose, but, as I said before, that is answered by the allegation on the part of the plaintiff that he was in such condition of mind as to render him irresponsible for what he did, even if he did employ appropriate means to destroy his own life.

You observe, then, that it is incumbent in the first place upon the defendant here to show that the allegation which it makes is true that this man employed appropriate means to destroy his life with the knowledge and intent that such should be their effect.

That he took laudanum and in sufficient quantity to destroy his life would seem to be a conclusion fully justified by the evidence in this case. He stated to Dr. Cooper that he had taken laudanum and indicated the quantity by showing him the bottle out of which he took it. That that quantity was sufficient to cause death would seem to be beyond all question, not only from our common knowledge of the effect of that drug and the quantity which would pro-

duce that result, but from the judgment of Dr. Cooper himself. He took about three-quarters of an ounce, and it is probable, the doctor said—he thinks he did—that he had taken enough to kill two steers.

Now, in the first place, did he take the laudanum? As I say, you would be fully justified in finding that he did take it. It was furnished to him at his own request. He had it at hand, and that he did take a sufficient quantity to produce death, as I have
51 said, would seem to be warranted by the common knowledge of the effect of the drug as well as by the judgment of Dr. Cooper himself.

Now, did he take it with intent to destroy his life? There is no evidence of any explicit declaration of his to that end, but you may judge, under all the circumstances, as to what his intent was. If he knew, as he probably did know, that the quantity which he said he took was enough to destroy his life, it would not be an irrational conclusion on your part that he did take it for that purpose. For what other purpose did he take it? According to the testimony of his sister, he wanted it to relieve the pain under which he was suffering at the time. She brought it there and gave him a dose which, it would seem to be understood between them, would be sufficient for any person in that condition. Why did he take more? She went away shortly afterwards, and probably, although it is not so expressly testified by anybody, he got up and went to the place where the laudanum was deposited and took it himself. I think he said to Dr. Cooper that he did take it himself.

Now, why did he take so large a quantity as presumably he knew was sufficient to cause his death?

As I said before, you may regard the use of such a quantity of laudanum as sufficient proof of his intent to destroy his life, so that you must be satisfied, not only that he took this laudanum, took sufficient quantity to destroy his life, but that he intended to destroy his life by taking the quantity of laudanum which he did take. If that fact is satisfactorily made out by the evidence,
52 the effect of it would be to relieve this company from the payment of the amount of this policy unless there are other circumstances which preclude its taking advantage of that clause in the policy, and therefore it is incumbent upon the plaintiff to show that the insured was not responsible in a legal sense (or in a moral sense, either) for this act of apparent self-destruction; in other words, that he was of unsound mind or insane at the time he committed this act.

I do not propose, gentlemen, to rediscuss the evidence which you have heard on that subject and which has been so fully, elaborately, and ably argued by counsel for both sides; but, taking the whole evidence into consideration, you must be satisfied by it that his mind was in such condition as to relieve him from responsibility for this act of apparent self-destruction. This question has been repeatedly before the Supreme Court of the United States, and the law, I think, is well settled in relation to it.

The court has been asked to instruct you upon the third point

submitted by counsel for defendant that "if the jury believe from the evidence that A. O. Smith's life was ended February 23rd, 1887, by means of laudanum poison administered by himself to himself, plaintiff cannot recover on the policy sued upon in this case unless the jury believe from the evidence that the destruction aforesaid of said Smith was the result of disease or accident occurring without his voluntary act."

That point is answered in this way, and it makes pretty much all the court has to say to you upon the state of mind or insanity
53 which will relieve a person who commits self-destruction from responsibility for that act: "The third point is affirmed with this explanation, that if the act of self-destruction was the result of insanity and was with suicidal intent, and the mind of the insured was so far deranged as to have made him incapable of using rational judgment in regard to the act he was about to commit, the defendant is liable. But if he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown that, in his mental condition, he could not exercise his reasoning faculties on the act he was about to commit, the defendant is liable. If from the evidence you believe that the insured, though excited or angered or depressed in mind from any cause, formed the determination to take his own life, because, in the exercise of his usual reasoning faculties, he preferred death to life, then the defendant is not liable."

Now, you will observe, gentlemen, that it is not every degree of insanity that will have the effect of avoiding a condition such as is contained in this policy. There must be insanity to such a degree as I have indicated in my answer to this point. It must be insanity or a derangement of the mind which incapacitates him from forming a rational judgment in regard to his act, its nature and consequences, its moral effect; or, if it is done under an insane impulse, that his reasoning powers were so far overthrown at the time by his mental condition that he could not exercise his reasoning faculties on this act. If he did form the determination to take his own life because, under all the circumstances in evidence, death to
54 him, in his insane judgment, it might be, was preferable to life, then the defendant is not liable for the amount claimed, and the insured was responsible as a sane man for all the consequences of his own act. That is the turning point of this whole controversy. Just as you find the evidence in regard to the condition of the mind of the insured you find for the plaintiff or defendant.

I repeat, gentlemen, because it is important that you should have a clear understanding of the law on this point, that in the answer to the point which I have just read to you I have copied mainly the language of the Supreme Court, so that it is the supreme law of the land, by which we are all governed, juries as well as courts.

The defendant's counsel have submitted certain points to us, of which the first, second, fifth, and ninth are refused, and therefore it is not necessary to read them. The fourth point is in these words:

"In order to justify the jury in finding a verdict in favor of the plaintiff in this case the jury, provided they are of opinion that A. O. Smith's death was occasioned by laudanum poison administered by himself to himself, must be satisfied from the evidence in the case that at the time of taking said laudanum poison the mind of A. O. Smith must have been so far deranged or impaired as to have made him incapable of using a rational judgment in regard to the act which he was committing."

That point is affirmed. It is chiefly given in the language of the Supreme Court itself.

The sixth point is as follows: "There is no presumption of
55 law, *prima facie* or otherwise, that self-destruction arises from insanity, and if the jury find from the evidence that the deceased, A. O. Smith, though greatly disturbed in mind because of the breaking off of his marriage engagement with Miss Genkinger, or the delay or postponement of the contemplated marriage, or from his alleged insolvency and embarassment, or from his alleged forgery of the Archibald Smith note, or from any other cause whatsoever formed the determination to take his own life and did administer poison, whereby he died, because in the exercise of his usual reasoning faculties he preferred death to life, then the company is not liable in this suit, because his act of self-destruction was within the meaning of the policy."

That point is affirmed and you are so instructed.

"Seventh. The burden of proving mental derangement or impairment is on the plaintiff."

That point is affirmed.

"Eighth. In view of the presumption of sanity the evidence to establish insanity should be satisfactory and convincing, and in absence of such testimony the jury should find in favor of the presumption of sanity."

That is to say, gentlemen, that every person is presumed to be of sound mind, and whoever alleges the contrary to that must show it by satisfactory and convincing proof. So that as Mr. Smith was confessedly at one time and up to a period shortly anterior to his death of sound mind, that condition is presumed to continue until its destruction by satisfactory and convincing evidence by the person who alleges such changed state of mind.

56 Now, gentlemen, I have given you all the instructions on the law which I deem it necessary to enable you to decide this case upon the evidence before you, and I repeat what I have already said to you, that, in the first place, it is incumbent upon the defendant, who alleges the fact that this man A. O. Smith's death was caused by the administration of poison taken by himself with intent to destroy his life, to satisfy you of that fact. If that fact was satisfactorily shown, then it is incumbent upon the plaintiff to show a state of mind which would render him in a legal sense irresponsible for such act of self-destruction—in other words, that he was insane to a degree which I have indicated and which I need not repeat, and that he did not therefore voluntarily violate the condition of the policy upon which the defendant relies. The burden

of showing that is upon the plaintiff, and it should be shown by testimony that is satisfactory and convincing to the jury; otherwise the presumption of everybody's sanity, until the contrary is shown, is not overthrown.

If you find, gentlemen of the jury, that this laudanum was taken by the assured by his own act with the intent to destroy his life, and if you find, further, that he was in an insane condition of mind at the time so far as to render him irresponsible, your verdict should be for the plaintiff for the amount of the policy ($10,000), with interest from the time fixed by its terms for its payment—30 days, I believe, after proofs of notice are filed. If you are not convinced by the evidence that at the time this act of self-destruction was committed the insured was not sane, under the instructions you have already received your verdict
57 should be for the defendant upon the ground that by the terms of the policy the company is relieved from responsibility.

Filed June 25, 1889.

H. D. GAMBLE, *Clerk.*

(*Motion and Reasons for New Trial Ex Parte Defendants.*)

In the Circuit Court of the United States for W. D. of Penna.

C. H. AKENS, Executor of Archibald O. Smith, Dec'd,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } No. 17. May Term, 1888.

And now, to wit, May 22nd, 1889, defendant, by its attorney, moves for a new trial, and in support thereof files the following reason, viz:

The verdict was contrary to the weight of evidence.

W. S. PURVIANCE,
Att'y for Def't.

Filed May 22, 1889.

H. D. GAMBLE, *Clerk.*

58 (*Order Overruling Motion.*)

AKEN, Ex'r of A. O. Smith,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE CO. } No. 18. May Term, 1888.

Surmotion for a new trial.

Per curiam: The motion for a new trial is denied.

Filed June 28, 1889.

H. D. GAMBLE, *Clerk.*

June 28th, 1889.—Judgment entered in favor of the plaintiff and against the defendant for the sum of eleven thousand two hundred

fifty-one & $\frac{66}{100}$ (11,251.66) dollars, with interest from May 18th, 1889.

H. D. GAMBLE, *Clerk.*

Bill of Exceptions.

In the Circuit Court of the United States for the Western District of Pennsylvania.

C. H. AKENS, Executor of A. O. Smith, Deceased, a Citizen of the County of Lawrence, State of Pennsylvania, and within the Western District Thereof,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company of Hartford, Connecticut, a Corporation of the Laws of the State of Connecticut.
} No. 17. May Term, 1888.

59 Be it remembered that in the May term, in the year of our Lord one thousand eight hundred and eighty-eight, came C. H. Akens, executor of A. O. Smith, dec'd, a citizen of the county of Lawrence, State of Pennsylvania, and within the western district thereof, by D. B. & L. B. Kurts, Esqs., his attorneys, into the circuit court of the United States for the western district thereof, before the judges thereof, and impleaded The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, a corporation by the laws of the State of Connecticut, having its chief place of business at Hartford, Connecticut, and engaged in the business of life insurance as a life insurance company, in a certain plea of assumpsit at No. 17, May term, 1888, of said court.

Whereupon the said plaintiff, by his attorneys aforesaid, filed his statement in due form of law according to the laws and practice of the State of Pennsylvania and complained of the insurance company defendant substantially:

1. That it had in the line of its business, on the 14th day of Jan'y, 1887, insured the life of the said A. O. Smith in the sum of $10,000 and had issued to him its (usual) policy, No. 179,555, in that sum, insuring his life during the term of his natural life, to be paid to his legal representatives 30 days after due notice and satisfactory evidence of the death of said A. O. Smith, as provided by the terms of the policy aforesaid, had been given said company (*pro ut* policy).

2. That afterwards, on the 23rd February, 1887, and while the policy aforesaid was in full force, the said A. O. Smith died at his home in Lawrence Co., Pa., aforesaid.

3. That everything by the terms of said policy required to be done and performed by the said A. O. Smith had been done and
60 performed, to wit, payment of premiums, complied with the agreements, stipulations, &c., of the policy.

4. That shortly prior to his death, to wit, on Feb'y 19th, 1887, the said A. O. Smith had made and executed his last will and

testament, wherein he appointed the said C. H. Akens executor thereof, and that on March 5th, 1887, letters testamentary thereon were duly granted by the register of Lawrence Co. to the said C. H. Akens, and that of all this the insurance company, defendant, had been duly and legally notified on March 16th, 1887.

By reason of all of which said plaintiff alleged said insurance company had become liable to pay to him, as the legal representative of said Smith, dec'd, the sum of $10,000, with interest from April 15th, 1887; but that, although often requested so to pay, the defendant insurance company had hitherto refused and still refused, to the damage of the plaintiff $20,000, and therefore he brought suit.

Whereupon, and after said plaintiff had complained as aforesaid, came the defendant, The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, by W. S. Purviance, Esq., its attorney, and pleaded to the plaintiff's statement a declaration as follows, viz:

"And now, to wit, March 6th, 1887, the defendant pleads non-assumpsit the special matter set forth in affidavit of defence, with leave to add, alter, or amend at bar.

W. S. PURVIANCE,
Att'y for Defendant."

The special matter contained in the affidavit of defence referred to in defendant's plea above recited and which special mat-
61 ter constituted the special plea above and by said general plea referred to and intended to be pleaded is and reads as follows, to wit:

"The policy of insurance sued upon in this case has become null and void by reason of the fact, which the defendant corporation charges (and fully expects and believes it will clearly prove at the trial of the case), that the plaintiff's testator', the said Archibald O. Smith's death, on the 23rd day of Feb'y, A. D. 1887, was a self-destruction or suicide by the said Archibald O. Smith, to wit, the direct result of poison, to wit, laudanum, administered to himself by himself shortly, to wit, on Feb'y 22nd, 1887, before his death, and was so administered and taken by himself for the purpose of causing and producing his death, and that the same did cause and produce his death, and that the self-destruction of the said Archibald O. Smith was contrary to and in violation of the express terms of the policy sued upon, to wit, the portion thereof on second page of said policy, opposite the word 'suicide,' on said page thereof, making the said policy wholly null and void."

And the special provision under head of suicide, above referred to in said above-recited affidavit of defence, is as follows, viz:

"That the following risks are not assumed by this company:" * * * "Suicide."—"The self-destruction of the insured in any form except upon proof that same is the direct result of disease or of accident occurring without the voluntary act of the insured."

And thereupon the case was so proceeded with afterwards as to

the pleadings therein as that on April 10th, 1889, the plain-
62 tiff Akens, in reply to the plea so as aforesaid, on March 6th, '89, pleaded by the insurance company, defendant, filed a replication in substance as follows, viz:

a. As to defendant's plea of non-assumpsit, the plaintiff joined issue and put himself upon the country.

b. And as to defendant's special plea set forth in defendant's affidavit of defense, the plaintiff replied and denied that by reason of anything in that plea pleaded should or ought the plaintiff to be barred of maintaining his suit, because the plaintiff in the first place wholly denied that A. O. Smith's death on Feb'y 23rd, 1887, was a self-destruction or suicide, and also denied that it was the direct result of laudanum, or any other poison, and also denied that any laudanum or other poison was administered to himself by himself shortly before his death, or that any laudanum or other poison was administered or taken by him for the purpose of producing his death, and also denied that his death was caused or produced by laudanum or other poison, and also denied that his death was contrary to or in violation of the suicide clause in defendant's policy, and prayed that all this might be inquired by the country.

And he, plaintiff, further averred that, even if wrong in point of fact in any or all the above denials, the death was the direct result of disease or accident occurring without the voluntary act of Smith, when his reasoning faculties at the time of so taking and administering the laudanum for the purpose of taking his life were so far impaired that he was not able to understand the moral character, nature, effect, and consequence of the act he was about to commit.

And averred further that the said Smith was impelled
63 thereto by an insane impulse which he had not the power to resist, and that the self-destruction was not in violation of the policy; wherefore, declaring a readiness to verify, plaintiff prayed judgment, &c., &c.

And the case being at issue on the pleadings as above recited, afterwards, to wit, at a circuit court of the United States in and for the western district of Penna., holden at Pittsburgh, Pennsylvania, on the 14th day of May, 1889, before the Honorable William McKennan, judge of said court, the aforesaid issue so joined between the parties aforesaid came on to be tried before a jury for that purpose duly empanelled—that is to say, A. F. Filson, Geo. P. Strome, Lorenzo Everit, J. R. Throckmorton, A. E. Bieman, E. J. Thompson, W. R. Page, Jas. Birmingham, J. B. Griggs, John V. Swearingen, J. C. Canrin, and Martin Nichols—at which day came then as well the said C. H. Akens, executor and plaintiff, as The Connecticut Mutual Life Insurance Company of Hartford, Conn., defendant, by their respective attorneys, and the jurors empanneled to try the said issue being called also came and were then and there in due manner empannelled and sworn to try the said issue, and upon the trial of that issue the counsel learned in the law for said C. H. Akens, executor and plaintiff, to maintain and prove the issue on his part gave in evidence—

The policy of insurance of the defendant company No. 179,555,

dated the 14th day of June, 1887, being the policy upon which suit was brought, and also in connection therewith the application which is a part of said policy, and also formal written proof of death of A. O. Smith, the assured, showing that he died Feb'y 23rd, 1887, and that due and proper, as required by the terms of the policy, notice by said formal written proofs was given the defendant
64 Co. of death, &c., and claim made March 16th, 1888, for the amount of the policy sued on, and thereupon rested.

Whereupon counsel for defendant, The Connecticut Mutual Life Ins. Co. of Hartford, Conn., to maintain the issue on its behalf, called numerous witnesses, to wit, Dr. J. L. Cooper, Calvin B. Welch, James C. Hutton, who gave testimony tending (*inter alia*) to prove the truth of the defendant's plea, and especially of his special plea hereinbefore referred to, and recited that A. O. Smith's death, on Feb'y 23, '87, was a self-destruction or suicide within the inhibited risks of the policy sued upon, and that it was the direct result of laudanum administered to himself by himself, taken shortly before his death, for the purpose of producing his death, and thereupon the defendant insurance company rested.

Whereupon counsel for the plaintiff, C. H. Aken, executor, in support of the issue presented in the replication filed April, 1889, and hereinbefore referred to and involved in the allegation that (even if A. O. Smith did destroy himself or suicide by reason of laudanum self-administered and so self-administered for the purpose of taking his own life) yet his death was the direct result of disease or of accident occur-ing without the voluntary act of Smith, when his reasoning faculties at the time of so taking and administering said poison were so far impaired that he was not able to understand the moral character, nature, effect, and consequence of the act he was about to commit, called witnesses, to wit, Dr. J. L. Cooper, C. B. Welsh, and others, who gave testimony tending to prove the truth of the allegation in the plaintiff's repli-ation, viz., that the reasoning faculties of said A. O. Smith at the time he took laudanum, to wit, Feb'y 22, '87, were so far impaired
65 that he was not able to understand the moral character, nature, effect, and consequences of the act he was about to commit, but other than this offered no testimony tending to show that the death of the said A. O. Smith was the direct result of disease or of accident occurring without the voluntary act of the insured.

And, the evidence being closed on the part of the plaintiff and the defendant, the counsel for the defendant (counsel for the plaintiff presenting no points) did then and there, before the said judge commenced his summing up and charge to the jury, present to the said judge, the Honorable Wm. McKennan, certain points of law in writing as being applicable to said case, and requested the said judge to charge the jury in accordance therewith, and which points are as follows, viz:

"1st point. That if the jury believe from the evidence in the case that A. O. Smith, the insured, destroyed his own life, and that at the time of self-destruction he had sufficient capacity to understand

the nature of the act which he was about to commit and the consequence which would result from it, then and in that case the plaintiff cannot recover on the policy sued on in this case."

But the said judge, having read said point to the jury, instead of charging as requested, did instruct the jury thereon as follows, viz:

"Refused;" to which decision defendant then and there excepted, and prayed the court to seal this its bill of exceptions, which was then and there done accordingly.

W. McKENNAN, *Cir. J.*

"2nd point. That if the jury believe from the evidence
66 that the self-destruction of the said A. O. Smith was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity, which impaired his sense of moral responsibility and rendered him to a certain extent irresponsible for his action."

But the said judge, having read said point to the jury, instead of charging as so requested, did instruct the jury thereon as follows, viz:

"Refused;" to which decision defendant then and there excepted, and prayed the court to seal this its bill of exceptions, which was then and there done accordingly.

W. McKENNAN, *Cir. Judge.*

"3rd point. That if the jury believe from the evidence that A. O. Smith's life was ended February 23rd, 1887, by means of laudanum poison administered by himself to himself, the plaintiff cannot recover on the policy sued upon in this case unless the jury believe also from the evidence that the self-destruction aforesaid of said Smith was the direct result of disease or of accident occurring without his voluntary action."

But the said judge, having read said point to the jury, instead of charging as so requested and unqualifiedly affirming the same, did instruct the jury thereon as follows, viz:

Answer. "The third point is affirmed, with this exception: that if the act of self-destruction was the result of insanity and
67 was with suicidal intent and the mind of the insured was so far deranged as to have made him incapable of using a rational judgment in regard to the act he was about to commit, the defendant is liable, but if he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to commit, the defendant is liable. If, from the evidence, you believe that the insured, though excited or angry or depressed in mind from any cause, formed the determination to take his own life, because in the exercise of his usual reasoning faculties he preferred death to life, then the defendant is not liable."

To which qualified affirmance defendant then and there excepted

and prayed the court to seal this its bill of exceptions, which was then and there done accordingly.

W. McKENNAN, *Cir. Judge.*

4th (and which was the 9th and last point submitted to the court on behalf of defendant). "Under all the evidence in this case, the verdict of the jury should be for the defendant."

But the said judge, having read said point to the jury, instead of charging as so requested, did instruct the jury thereon as follows, viz:

"Refused;" to which decision defendant then and there excepted and prayed the court to seal this its bill of exceptions, which was then and there done accordingly.

W. McKENNAN, *Cir. J.*

68 And the said judge, having delivered his opinion to the jury aforesaid, with the directions and under the rulings hereinbefore set forth on the four points above referred to, made by the defendant's counsel, left the same to the jury aforesaid on the 17th day of May, 1889, which jury then and there, to wit, at Pittsburgh, Pa., on the 18th day of May, 1889, gave its verdict for the plaintiff and found for him in the sum of $11,251.66 as damages, upon which verdict judgment was afterwards by the court entered in the case on the 18th day of December, 1889.

And inasmuch as the several matters aforesaid in this bill of exceptions contained and on the part of the said defendant, The Connecticut Mutual Life Insurance Co. of Hartford, Conn., insisted on and requested to be charged as correct legal propositions do not appear by the record of the verdict and judgment aforesaid, the counsel for the defendant did then and there prof-er his aforesaid exceptions to the several rulings and answers to the four points aforesaid to the said judge aforesaid, who then and there, as herein now recited, duly sealed to the same, and at the request of the said counsel for the said defendant, The Connecticut Mutual Life Insurance Company of Hartford, Conn., hath put his seal thereto this 11th day of February, A. D. 1890.

W. McKENNAN, [SEAL.]
Cir. Judge.

Filed Feb'y 11, 1890.

H. D. GAMBLE, *Clerk.*

69 C. H. AKENS, Ex'r of A. O. Smith,
vs.
CONNECTICUT MUTUAL LIFE INS. CO. } No. 17. May Term, 1888.

(*Bond on Writ of Error.*)

Know all men by these presents that we, the Connecticut Mutual Life Insurance Company of Hartford, Connecticut, a corporation by the laws of the State of Connecticut, and the *the* American Surety Company of New York, a corporation by the laws of the State of

New York, are held and firmly bounden unto C. H. Akens, executor of A. O. Smith, deceased, late of the county of Lawrence, in the State of Pennsylvania, in the sum of twenty-five thousand dollars, lawful money of the United States of America, to be paid to the said C. H. Akens, executor, &c., his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we and each of us do bind ourselves and our successors firmly by these presents.

Whereas the said The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, defendant in a certain suit at law at No. 17, May term, 1888, of the circuit court of the United States for the western district of Pennsylvania, wherein the said
70 C. H. Akens, executor, &c., is plaintiff, is about to sue forth a writ of error to the judgment of said circuit court in the cause aforesaid in order that the record of said cause may be removed to the Supreme Court of the United States for inspection:

Now, the condition of this obligation is such that if the above-bounden The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, plaintiff in error, shall prosecute its said writ of error with effect and if it shall fail to make good its plea shall answer all damages and costs in the premises, then this obligation shall be void; otherwise to remain in full force and virtue.

In witness whereof The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, has, at Hartford, Connecticut, caused its common or corporate seal to be hereto affixed, duly attested by the secretary of said company.

And the American Surety Company of New York has caused its common or corporate seal to be hereto affixed, duly attested, this 7th day of February, A. D. 1890.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, [L. S.]
By JOHN W. TAYLOR, *Its Vice-president.*

Attest: EDWARD M. PRINCE,
Secretary of the Connecticut Mutual Life Insurance Co.

AMERICAN SURETY COMPANY OF NEW YORK, [L. S.]
By ROB'T PITCAIRN,
Resident Vice-president.

Attest: GIBSON D. PACKER,
Resident Ass't Sec'y.

Bond and surety approved Feb'y 11, 1890.
W. McKENNAN, *C. J.*

Filed Feb'y 11, 1890.
H. D. GAMBLE, *Clerk.*

71 In the Circuit Court of the United States for the Western District of Pennsylvania.

C. H. AKENS, Executor of Estate of A. O. Smith, Dec'd,
vs.
CONNECTICUT MUT. LIFE INS. CO. OF HARTFORD.
No. 17. May Term, 1888.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Seal of the U. S. Circuit Court, W. D. Penna.

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled cause so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 6th day of May, A. D. 1890.

H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, Marcus W. Acheson, judge holding the United States circuit court for said district, do hereby certify that H. D. Gamble, above named, was at the time of making the above certificate and is now clerk of the said court, and that the said certificate made by him is in due form of law.

M. W. ACHESON,
Judge Holding U. S. Circuit Court.

Pittsburgh, May 6th, 1890.

72 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court for the western district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between C. H. Akens, executor of A. O. Smith, dec'd, plaintiff, and The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 2d Monday of October next, in the said Supreme Court to be then and there held, that, the record

and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 11 day of Feb'y, A. D. 1890.

[Seal of the U. S. Circuit Court, W. D. Penna.]

Allowed by—
W. McKENNAN, *Cir. Judge.*

73 UNITED STATES OF AMERICA, } *sct:*
Western District of Pennsylvania, }

To C. H. Akens, executor of A. O. Smith, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the 2d Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court, wherein The Connecticut Mutual Life Insurance Company of Hartford, Conn., is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 11th day of Feb'y, A. D. 1890.

[Seal of the U. S. Circuit Court, W. D. Penna.]

W. McKENNAN,
Judge of U. S. Cir. Court.

Attest: H. D. GAMBLE, *Clerk.*

74 [Endorsed:] No. 17. May term, 1888. No. —. —— term, 18—. —— *vs.* ——. Citation. E. B. Kurtz, Aken's att'y.

[Endorsed:] Feb'y 15, 1890. Served the within citation on C. H. Akens, executor, &c., personally, by making known to him the contents hereof and leaving with him a true and attested copy of the same. So ans. J. R. Hurruh, U. S. marshal. Fees: Service & copy, 2.50; mileage, 3.00—5.50.

Endorsed on cover: Case No. 14,029. W. Pennsylvania C. C. U. S. No. 342. The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, plaintiff in error, *vs.* C. H. Akens, executor of A. O. Smith, deceased. Filed May 7, 1890.

150 U.S. 468

150 U.S. 468

FILED,
NOV 13 1893
JAMES. H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

TERM No. 100.

The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, Plaintiff in Error and Defendant below,

VERSUS

C. H. Akens, Executor of A. O. Smith, Deceased.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

GEO. W. GUTHRIE,
Attorney for Plaintiff in Error.

BROS. M. E. KEBLE PRINT, BARTGELL LAW BUILDING, PITTSBURG.

LAW ASSOCIATION
OF
PHILADELPHIA

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

TERM No. 100.

The Connecticut Mutual Life Insurance Company of Hartford, Connecticut, Plaintiff in Error and Defendant below,

VERSUS

C. H. Akens, Executor of A. O. Smith, Deceased.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

HISTORY OF THE CASE.

This was an action brought by C. H. Akens, Executor of the last will and testament of Archibald O. Smith on a policy of insurance for $10,000 on the life of the testator issued by the Connecticut Mutual Life Insurance Company.

The policy sued on was dated January 14, 1887: by it the Company agreed to pay $10,000 in thirty days after due notice and satisfactory evidence of the death of the assured, expressly excluding, however, from the risks assumed "*The self-destruction of the insured in any form, except upon proof that the same is the direct result of disease or of accident occurring without the voluntary act of the insured.*" (See Record, p. 6.)

The decedent received the policy January 31st, 1887, and died twenty-three days thereafter from an overdose of opium (seven drachms) administered by himself the day before.

The pleadings in the case were under the Pennsylvania Statute of May 25, 1887.

Plaintiff's statement averred that the insured had paid the premiums and complied with the other requirements of the policy and had died while it was in full force, and that proof of the death had been furnished to the Company.

Defendant's affidavit of defence averred that the cause of the death of the insured was self-destruction within the exception of the policy above quoted.

The plea filed was "non-assumpsit" and the special matter set forth in the affidavit of defence.

Plaintiff filed a replication denying that the death of the insured was a self-destruction, and averring that even if it was, such self-destruction was the result of disease or accident, and that at the time the insured was insane and actuated by an insane impulse. But there was no averment that any proof thereof had been rendered to the Company.

On the trial of the case, the plaintiff, having introduced the policy in evidence and proved the death of the assured while it was in force, and notice of death to the company, rested.

The defendant thereupon introduced evidence which clearly proved that the assured died from the effect of a dose of 7 drachms of opium administered by himself with the intention of destroying his life.

In rebuttal the plaintiff introduced evidence which he claimed (but defendant denied) showed that at the time the poison was taken the assured was in a condition of mind which rendered him legally irresponsible for his act, *but there was no evidence whatever that such mental condition, if it existed, was the result of disease or accident occurring without his voluntary act, or that any proof thereof had been furnished to the company.* (See Record p. 36).

The evidence being closed, defendant's counsel asked the Court to instruct the jury amongst other things, as follows:

"First point. That if the jury believe from the evidence in the case that A. O. Smith, the insured, destroyed his own life, and that at the time of the self-destruction he had sufficient capacity to understand the nature of the act which he was about to commit and the consequences which would result from it, then and in that case the plaintiff cannot recover on the policy sued on in this case.

"Second point. That if the jury believe from the evidence that the self-destruction of the said A. O. Smith was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity which impaired his sense of moral responsibility and rendered him to a certain extent irresponsible for his action.

"Third point. That if the jury believe from the evidence that A. O. Smith's life was ended February 23d, 1887, by means of laudanum poison administered by himself to himself, the plaintiff cannot recover on the policy sued upon in this case unless the jury believe also from the evidence that the self destruction aforesaid of said Smith was the direct result of disease or of accident occurring without his voluntary action.

"Ninth point. Under all the evidence in this case, the verdict of the jury should be for the defendant."

The purpose of these points was to secure a construction of the clause in the policy in relation to "self-destruction," already quoted at length, and they were predicated on the theory that if the assured died from poison administered by himself with the intention of destroying his life, there could be no recovery against the defendant, even though his mental condition was such as to render him

legally irresponsible for the act, unless (1st) *such condition was the result of disease or accident*, and unless (2d) *proof thereof was rendered to the Company, or at least produced on this trial.*

The learned Judge of the Circuit Court, however, did not accept this view: He refused the 2d and 9th points and qualified the 3d as follows:

"This 3d point is affirmed with this exception, that if the act of self-destruction was the result of insanity and was with suicidal intent, and the mind of the insured was so far deranged as to have made him incapable of using a rational judgment in regard to the act he was about to commit, the defendant is liable, but if he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to commit, the defendant is liable. If, from the evidence, you believe that the insured, though excited or angry or depressed in mind from any cause, formed the determination to take his own life, because in the exercise of his usual reasoning faculties he preferred death to life, then the defendant is not liable."

The effect of this was to instruct the jury that even though they should find that the assured intentionally destroyed his own life, nevertheless their verdict should be for the plaintiff if at the time he did so his mental condition was of the character described.

This qualification was a practical refusal of the instruction asked for. Its effect was to instruct the jury that their verdict should be for plaintiff even though they should find that the assured intentionally destroyed his life, if they should also find that at the time he did so his mental condition was of the character described, without regard to whether such condition was caused by disease or

accident, and also without regard to whether proof thereof had been rendered to the Company.

Counsel for plaintiff in error respectfully submits that this was erroneous: that under the express provisions of the policy which exempts it from liability in case of the self-destruction of the insured, in any form, except upon proof that the same is the direct result of disease, or accident," &c., the fact that at the time of the act of self-destruction the mental condition of the assured was of the character set forth in said instruction would not be sufficient to entitle the plaintiff to recover, *unless such condition was the result of disease or accident*, and unless also proof thereof was first made to the Company, or at least produced at the trial.

It is evident, therefore, that the present controversy turns upon the proper construction of the clause referred to, and that if the construction contended for by defendant below in either the 2d or 3d point be correct, the Court erred in its instruction to the jury, and the judgment must be reversed.

The facts, as established by the evidence, are as follows:

Mr. Smith, the assured, lived in New Castle, Pennsylvania where he carried on a small dyeing establishment, which never was profitable, and towards the last did not yield enough to pay the hire of his one assistant, a dollar a day.

About two years prior to his death, he became engaged to a young lady named Lizzie C. Genkinger. They seem to have been very much attached to each other, and the wedding was fixed for March 8 or 10, 1887. Several times before this, a day had been fixed, but it had always been postponed by the young lady, on account of the opposition of her mother, who was opposed to the match. Whenever this occurred, Mr. Smith would express great anxiety for an early marriage, and frequently urged Miss Genkinger to consent to a secret one.

On January 13, 1887, he made application to the plain-

tiff in error for a policy of $10,000.00 on his life: on the 14th he was examined by the medical examiner of the Company, found to be sound and healthy in every respect, and his application was approved; and on the 31st he accepted the policy and paid the premiums, having borrowed the money the day before on a note.

The fact of this insurance was immediately communicated to Miss Genkinger.

On Wednesday evening, February 16, (just 16 days after he received the policy, and 7 days before his death) Miss Genkinger informed him that owing to the continued opposition of her mother, she would have to again *postpone* the wedding. He had made arrangements for the wedding, and when it was again postponed he seemed very much disheartened, and told Miss. Genkinger that if she would not marry him at the time fixed there was no use in his living, and he "would be buried in his wedding clothes" (page 290).

There was no claim or pretense of any insanity prior to this occurrence.

The next day (Thursday) he sent for C. H. Akens, the plaintiff below, an attorney-at-law, and instructed him to draw up a will, containing, amongst other bequests, a clause leaving the proceeds of the policy in question to Miss Genkinger. A draft of the will was submitted to him and approved Saturday morning, and the formal instrument was executed later on the same day, the witnesses being friends of Mr. Akens brought with him for that purpose. On Sunday evening he went to Miss Genkinger's residence, but finding she had visitors there, did not go in. On Monday morning he sent a message to her, asking her to come and see him the next morning.

Miss Genkinger did not call the next morning (Tuesday), and concluding that she did not intend to come, he sent his employee, C. B. Welch, to several drug stores to get some Prussic acid (having previously made personal in-

quiries as to the quantity needed to kill a man), pretending that he needed it for some purpose in connection with his business. This being refused him, he requested his sister, who had come in to see him, to get an ounce of opium, saying that he wanted to take it to relieve the pain from which he said he was suffering, and enable him to get a little sleep. She got an ounce bottle of opium—gave him three drops--and left him. Three or four hours after she left him, he was found in his room in a comatose state, seven drachms of the opium (nearly the whole bottle), having been taken. He was restored to consciousness and acknowledged that he had taken all the opium that was gone. Every effort was made to stimulate him and relieve him from the effects of the opium, but he again sank into a comatose state, in which he died the next day.

In settling his estate his executors discovered that it consisted of cash to the amount of $46.47, and personal property from which there was realized only $104.00; while his debts, including the note, amounted to over $1,500.00.

It was in evidence that about six weeks before his death Mr. Smith had earnestly advocated the propriety of suicide in case a man found himself driven to the wall by business, or other trouble; that on one occasion when Miss Genkinger had spoken to him about the advisability of entirely breaking off their engagement on account of her mother's opposition, he told her that if she did this he would not live a week; and that after his death a paper was found in one of his drawers, giving a list of persons he wanted to act as pall bearers.

It was also in evidence that he knew the deadly power of the drug—that he had made personal inquiries about the quantity of Prussic acid necessary to kill a man, and endeavored to get enough of it by false pretenses—that the opium which he took he obtained by a trick—that the quantity taken was very much more than was needed to destroy life (as Dr. Cooper expressed it, "enough to kill

two steers")—that he himself acknowledged that he had taken it, and that his death was caused by the opium so taken.

The testimony of Dr. J. W. Wallace, the examining physician of the defendant company, and of Dr. J. L. Cooper, who attended the assured, and was besides his intimate friend and companion, clearly showed that he had no disease; and their evidence was not contradicted.

While not admitting that the assured had taken his own life, the plaintiff, who was suing as executor of the will, attempted to prove that he was insane from the day after the wedding was postponed until and including the day the poison was taken, and therefore was not responsible for his acts.

(That the plaintiff himself did not consider the assured insane, is evident from the fact that he drew his will, procured persons to witness it, and was present at its execution and himself probated it after the death; and that although he was a witness in the case, he never once testified to any such opinion.)

The witnesses called by plaintiff on this point were Dr. J. L. Cooper, his physician and intimate personal friend; Calvin B. Welch, his hired man; Archibald Smith, his father; Ella H. Smith, his sister; Charles McCandless, Edward Duff, Edward McMillan, Frank A. Blackstone, J. M. McMillan, S. J. Chambers and W. P. Ellis. All these witnesses saw him at different times during the period following the day on which Miss Genkinger informed him that the marriage would have to be postponed. Some of them saw him frequently during that period, and some of them saw him once or twice. Dr. Cooper, Mr. Welch and Mr. Smith (the father), were not asked to give any opinion on the subject; the testimony of the others was confined to incidents which were entirely compatible with perfect sanity.

They all testified that during this period he complained of pain, said he was not feeling well, was depressed,

seemed troubled about something, and did not give much attention to business, and was not in a condition to do so.

There was, however, no evidence whatever that this mental condition was the result of disease or accident. On the contrary, Dr. Cooper expressly testified that he found no evidence of any physical affection; that he was worried and depressed over what he believed was the final breaking off of his engagement, and family and other troubles, the details of which were not given.

(Defendant below contended that this evidence was insufficient to warrant a finding of insanity and asked the Court to so charge. This was refused, whether properly or not is now immaterial as the question cannot be raised on the record as made up. The evidence on the point is referred to simply for the purpose of emphasizing the fact set forth in the Bill of Exceptions, Record p. 36 that the mental condition of the assured which was relied upon as an excuse for his suicide, was not caused by disease.)

However, the substance of the testimony is here given for convenience of reference.

Dr. Cooper:

Q. You were examined the other day very fully as to your knowledge of Mr. Archibald O. Smith during the last week of his life, and in view of the facts that came under your observation, and to which you have testified to this jury, taking them all into consideration, and your previous knowledge of Mr. Smith, I wish you would state to the jury whether in your opinion he was in mental condition, or in the exercise of his reason and judgment during that week to qualify him for the transaction of business?

A. In answering that question I would give it as my opinion that the man was not in the possession of his usual business capacity from the time I saw him on Friday. He was not so bad on Friday as he was afterwards.

Q. Not so bad on Friday as he was afterwards?

A. No, sir. It appeared to wear on him more and more.

Q. State whether or not from Friday on you think he was capable of exercising his reason or judgment upon any business or other proposition, except that in the immediate line of his trouble?—that is, whether he would be able to get his mind off of it so as to exercise that calmly, deliberately and intelligently upon any other subject?

A. No, sir. I don't think he could.

Q. I mean whether he could relieve his mind of the particular trouble so as to exercise his reason or judgment?

A. I couldn't get him off the one subject long enough to get his mind on to anything, but the main troubles that he complained of was the family trouble and trouble in love.

Q. Do you think he was capable of correct reasoning upon that subject, the one subject of his trouble? Do you think he was capable of exercising reason and judgment in reference to that?

A. Oh, he talked on and on about it; I don't know whether what he was telling me was the truth or not in regard to the family trouble, or in regard to the other trouble either. I had nothing only his word. It was a rambling discourse on the trouble, both the domestic and the other.

Calvin B. Welch:

Q. You have stated to the jury your knowledge of Mr. Smith, and you have stated his condition during the last week of his life. I wish you to state from what you observed during that week of him, his conduct, conversation and condition, whether or not, in your opinion, during that week he was mentally fit or competent to transact business?

Objected to because the witness has not stated the facts upon which he is asked to predicate his opinion.

Objection over-ruled.

Q. Answer the question. From what you saw and knew of him during that week, state whether during that

week he was competent, had sufficient mental ability to understand what he was doing and fit for business?

Q. Why certainly he didn't seem to be in a general way as far as I could see.

Q. What do you say?

A. I say I don't think he was capable in a general way of transacting business.

Q. State whether or not during that week, you think he was competent to reason intelligently or calmly, to exercise his reason or judgment reasonably or calmly upon any proposition?

A. I rather think not, not connectedly, at least.

(On cross-examination Mr. Welch admitted that he considered Mr. Smith perfectly competent to make a will or sign a deed at any time before the poison began to take full effect.

Archibald Smith.

Q. Was Archie's manner and condition in any respect as it usually was, or had been before?

A. Why, no; he didn't appear the same man to me, and on Saturday night, if I remember, when I was there, he jumped on the floor one time, and put one hand on his back and the other on the heart. I looked at him; and says: What's wrong? He says: You needn't get scared; I have just a pain at my heart and another at the spine in my back. After awhile he went over and sat down on a chair.

The rest of the testimony is made up of trivial and insignificant matters of the character already quoted, testified to by different persons who saw him between Thursday morning and Tuesday afternoon, none of which can be distorted into evidence of insanity.

His father, Archibald Smith, says that he saw him on Friday after dinner, and that he looked so "flat-like," that he thought he must be sick, and attempted to cheer him up. He saw him again on Saturday, and when he came in he

was sitting on a chair. He seemed sick, dull and uninterested.

Ella H. Smith, his sister, says she saw him on Tuesday morning; that he was quiet and sad looking, and said he didn't feel well or sleep well, and complained of pain.

Charles McCandless says that about a week before his death he came into a restaurant, where there were six of his companions sitting, pulled out a roll of money, and ordered "oysters for the house;" the total cost of the treat being a dollar and a half; he spent Sunday night with him, and during that time he did not seem very bright or talkative.

Edward McMillan called on him on Friday or Saturday to inquire about his health; found him sitting in the chair, apparently thinking; asked him how he was; talked to him for a few moments, and then left. He also testified that for some time before this he seemed to be losing interest in his business.

Frank A. Blackstone saw him Sunday morning at his rooms and asked him "if his lady had gone back on him." After that he seemed quiet and disinclined to talk. J. M. McMillan and S. J. Chambers passed by his place together on Thursday evening, and saw him sitting at the window with his feet up, apparently thinking. W. P. Ellis was at his rooms some time during this week, and said that Mr. Smith did not seem to take any interest in the improvements that had been contemplated.

ASSIGNMENTS OF ERROR.

The learned Court below erred.

First. In refusing to hold as requested in the 1st point of the Connecticut Mutual Life Insurance Company, plaintiff in error and defendant below, which point is as follows:

"1st point. That if the jury believe from the evidence in the case that A. O. Smith, the insured, destroyed his own life, and that at the time of self-destruction he had sufficient capacity to understand the nature of the act which he was about to commit and the consequences which would result from it, then and in that case the plaintiff cannot recover on the policy sued on in this case."

To which point the Court answered. "Refused."

Second. In refusing to hold as requested in the second point of the Connecticut Mutual Life Insurance Company, plaintiff in error and defendant below, which point is as follows:

2d point. That if the jury believe from the evidence that the self-destruction of the said A. O. Smith was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity which impaired his sense of moral responsibility and rendered him to a certain extent irresponsible for his action."

To which point the Court answered. "Refused."

Third. In refusing to hold without qualification, as requested in the third point of the Connecticut Mutual Life Insurance Company, plaintiff in error and defendant below, which point is as follows:

"Third point. That if the jury believe from the evidence that A. O. Smith's life was ended February 23d, 1887, by means of laudanum poison administered by himself to himself, the plaintiff cannot recover on the policy sued upon

in this case, unless the jury believe also from the evidence that the self-destruction aforesaid of said Smith was the direct result of disease or of accident occurring without his voluntary action."

To which point the Court answered:

The third point is affirmed, with this exception: That if the act of self-destruction was the result of insanity, and was with suicidal intent, and the mind of the insured was so far deranged as to have made him incapable of using a rational judgment in regard to the act he was about to commit, the defendant is liable, but if he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to commit, the defendant is liable. If, from the evidence, you believe that the insured, though excited, or angry, or depressed in mind from any cause, formed the determination to take his own life, because in the exercise of his usual reasoning faculties he preferred death to life, then the defendant is not liable."

Fourth. In refusing to hold as requested in the 9th point of the Connecticut Mutual Life Insurance Company, plaintiff in error and defendant below, which point is as follows:

"Ninth point. Under all the evidence in this case the verdict of the jury should be for the defendant."

To which the Court answered "Refused."

ARGUMENT FOR PLAINTIFF IN ERROR.

The policy sued upon in this case binds the Company to pay ten thousands dollar in thirty days after notice and proof of death, excluding, however, amongst other things "the self-destruction of the insured in any form, *except upon proof* that the same is the direct result of disease or of accident occurring without the voluntary act of the insured."

The assignments of error raise two questions of law, both depending upon the proper construction of the provisions above quoted.

There was evidence on the part of the defendant below, which it was claimed tended to show that the insured died from an overdose of opium administered by himself with the intention of taking his life.

There was evidence on the part of the plaintiff below, which, it was claimed, tended to show that at the time the opium was alleged to have been taken, the mental condition of the insured was such as to render him irresponsible for his acts; *but there was no evidence whatever that any proof of this had been given to the Company, nor was there any evidence that such mental condition, if it existed at all, was the result of disease.*

The Court below instructed the jury in substance, that if at the time of taking the opium the insured was insane, or if he was controlled by an insane impulse, or "if his mind was so far deranged as to make him incapable of using a rational judgment," or "if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties," plaintiff was entitled to recover; thereby construing the exception as covering cases of suicide only, and entirely ignoring the provision requiring, in the case of self-destruction, proof that it was the direct result of disease.

It is respectfully submitted that this was erroneous; that the phrase "self-destruction, in any form" used in the

policy, is not merely the equivalent of suicide, but covers every case of self-killing, whether felonious or otherwise; and further, that if the death of the insured was brought about in the manner alleged, no recovery could be had, even though his mental condition was such as described by the Court, unless it was the direct result of disease (the opium having been self-administered with the intention of destroying his life, it could not be accidental), and unless proof threreof was furnished to the Company before suit brought, or at least produced at the trial of the case.

If by the expression "self-destruction in any form," the parties meant only suicide or felonious self-killing, then the words which follow have no significance or effect. A suicide could not be the result of disease or of accident occurring without the voluntary act of the insured. Therefore, no proof that it was such could be produced. Self-killing by an insane man, or by accident, is not suicide, and to interpret this provision so that it excludes suicide on proof that it is not suicide, is to make it insensible.

It follows, therefore, that the context in which the phrase is used clearly shows that by it the parties themselves intended something more than suicide only. It is also clear that the only other sense in which it could have been used was the generic one, meaning thereby any case of self-killing, whether felonious or otherwise. And therefore that it was used in that sense, and as the word is not a technical one and has never received a technical interpretation, the meaning which the parties themselves attached to it must prevail.

This was the reason assigned by this Court for its decision in Bigelow vs. Ins. Co., 93 U. S. 284, and it applies word for word to the question now pending. In that case the phrase used was "die by suicide, sane or insane;" this Court held that the word "suicide" should be construed as meaning self-destruction, felonious or otherwise, because to limit it to felonious self-destruction (its correct meaning)

would defeat the intention of the parties as shown by the use of the additional words which were clearly introduced for the purpose of qualifying the meaning which they themselves had attached to it, which could only be self-destruction.

If even the word "suicide" itself, where qualified by words not consistent with its correct sense, will be construed as a generic term, because, the context indicates that the word was not used by the parties in its correct sense, but with a meaning of their own, to which full effect should be given, certainly the same effect should be given to the word "self-destruction" as used in the clause now before the Court.

In the first place, as in the case of Bigelow vs. Insurance Co., *supra*, the effect of the exception is entirely destroyed if the word "self-destruction" is construed as being only the equivalent of suicide; for so construed the exception as already stated amounts to this, that the Company excepts suicide from the risks assumed upon proof that it was not suicide, for unless the death is caused by the act of a sane man done with the intention of destroying his life, it cannot be suicide.

In the second place, the word "self-destruction," both by authority and by general usage, is a generic word, and has never been held to have only a limited technical meaning, as is the case with the word suicide. Therefore, standing alone, it would embrace every case of self-killing, whether felonious or non-felonious, or whether by intention or accident.

It belongs to the same class as the word homicide, which includes every mode by which the life of one man is taken by the act of another, whether sane or insane, by intention or accident, feloniously or non-feloniously.

This is the signification given to the word by authority and general usage, and as above stated the context in which

it appears in the policy shows that it was so used by the parties in this case.

In Worcester's Dictionary the word is defined as meaning "The destruction of one's self: suicide." In Webster's Dictionary it is given as "The destruction of one's self; voluntary destruction." In the Century, "The destruction of one's self; or itself." In the Encyclopaedic Dictionary, "The destruction of one's self; self-murder; suicide."

A mere reading of these definitions shows that the word is not simply the equivalent or synonym of the word suicide, and that it embraces something more than that word. The force of this is strongly brought out by a comparison with the definitions of the word suicide. In no instance is that word given as equivalent to or synonymous with "self-destruction." Worcester gives it as "The act of one who designedly kills himself." Webster and the Century, "Designedly destroying;" and the Encyclopaedic, "The act of wilfully destroying one's own life."

It is apparent, therefore, that when correctly used, the word "self-destruction" does not of itself import any element of intention or design: it simply designates the act of taking one's own life, without regard to whether it is felonious or non-felonious, intentional or otherwise.

It was used in this sense by this Court in the cases of Insurance Co. vs. Terry, 15 Wallace 580; Bigelow vs. Ins. Co. 93 U. S. 284; Ins. Co. vs. Roedel, 95 U. S. 232; Ins. Co. vs. Broughton, 109 U. S. 121; Ins. Co. vs. Lathrop, 111 U. S. 612.

In each one of these cases the word "suicide" and the phrase "died by his own hand," are defined as meaning felonious self-destruction, a definition which has no meaning if "suicide" and "self-destruction" are synonymous terms. It would amount to nothing more than a statement that "suicide" meant "felonious suicide."

On the other hand, if the word "self-destruction" is a

generic term, then the definition is logically and grammatically correct.

This meaning is the one given to the word in general use. In common usage, the word simply indicates that the man's life has been destroyed through his own instrumentality: to give color to the act, some adjective or adjective phrase is necessary, and is always used.

"The best construction is that which is made by viewing the subject of the contract as the mass of mankind would view it, for it may be safely assumed that such was the aspect in which the parties themselves viewed it." Gibson Ch. J. in Nav. Co. vs. Moore, 2 Whart. 491.

It is also worthy of consideration that unless the word "self-destruction" is a generic term, as we contend, there is no word in our language which is, and the idea cannot be expressed except by a phrase which will carry in itself a contradiction in terms.

If the phrase "self-destruction in any form" stood alone it might be contended that the expression "in any form" referred to the manner of killing and not to its character as felonious or otherwise; but this, for the reasons stated, is impossible, when the whole context is considered, the words showing that it was the character and not the manner of the self-killing which the parties intended to provide for. This is particularly so when it is remembered that the word has never received a technical definition.

We therefore submit, that as the evidence showed that the insured died from poison administered by himself with the intention of taking his own life, plaintiff cannot recover in this case, even though the insured was insane at the time, except by showing that such insanity was the direct result of disease and that proof thereof was given to the Company.

The circumstances leading to the incorporation of these provisions in life insurance policies are too well known to require more than the merest reference. It having been

held that an exception of suicide from the risks assumed would exclude only felonious self-destruction, the insurance companies sought some word or phrase which would have a wider meaning. Some, as the plaintiff in error, adopted the words "self-destruction in any form," while others retained the word "suicide," qualifying it, however, with various phrases, as "sane or insane," "felonious or otherwise," "voluntary or involuntary."

The effect of this was to exclude many risks which the companies were willing to assume upon proper conditions, as, for instance, they were willing to insure against self-destruction by accident, or while suffering from insanity the direct result of disease, provided they could be protected from imposition, and the well-known tendency of juries to find insanity in every case of self-destruction.

The clause now before the Court was designed for this purpose. The company agrees to pay in a certain time after proof of death, self-destruction being excluded "except upon proof that it was the direct result of disease or of accident occurring without the voluntary act of the insured."

Nothing can be clearer than that it was the intention of the parties to exclude from the risks assumed some cases of self-destruction, and in all cases of self-destruction to impose upon the claimant the duty of furnishing proof that it was not one of the excluded cases; and, further, that the cases assumed are those in which the self-destruction was the direct result of disease or accident, and that all others were excluded.

Upon this two questions arise: First. When and to whom proof is to be furnished in order to entitle plaintiff to recover; and, second, whether evidence that the mental condition of the insured was of the character described in the answer to defendant's third point was of itself evidence of insanity.

The record shows that the only proof furnished the company was that the insured died February 23, 1887.

(See record, page 36.) If, under the provisions of the policy in case of self-destruction, proof that it was the direct result of disease or accident must be furnished to the company, the plaintiff cannot recover, and the jury should have been so instructed, and the refusal of the Court to affirm plaintiff's ninth point, requesting an instruction to that effect, was error.

That a provision in the policy requiring the submission of proof to the company is valid and will be sustained by the Court, has not been questioned since the case of Insurance Co. v. Lawrence, 2 Peters, 25.

It is a reasonable requirement intended to protect the company, and enable it to make a thorough examination of claims while the circumstances are fresh.

If the policy sued upon had been in the form of a covenant to pay upon proof of death from various causes, including self-destruction the direct result of disease, there could be no question that in order to entitle him to recover the claimant would be obliged to show that he had given the company the proof called for; it would be the same if the provision restricting liability was in the form of a proviso or clause exempting certain risks which would otherwise be covered by the general words; as, for instance, if the covenant were to pay upon proof of death, excluding self-destruction, except upon proof that it was the direct result of disease. How, then, can it make any difference that the restriction is embraced in a clause excluding from the operation of the policy various other risks which, by reason of its length, could not conveniently be incorporated in the body of the policy, and is, therefore, endorsed upon it and made part of it by reference.

Reading the operative parts of the policy in their proper sequence, the company insures the life of the insured for $10,000, to be paid within 30 days after notice and proof of death, subject to certain conditions and agreements upon which both parties agreed the policy was issued and ac-

cepted, among which was one excluding from the risks assumed self-destruction in any form, except upon proof that it was the direct result of disease.

Clearly this means that in case of self-destruction the liability to pay does not arise until proof that it was the direct result of disease had been submitted to the company.

It might be that the discretion of the company in determining what is sufficient proof would not be final and that it could not avoid liability by an arbitrary refusal to accept what the Court should subsequently decide was a sufficient compliance with the requirements of the policy.

That question, however, is not now before the Court. No proof whatever was submitted to the company on this point.

It is respectfully submitted, however, that whether or not the plaintiff was bound to furnish such proof to the company as above contended, he certainly could not recover without producing it in Court, and that proof that at the time of the self destruction, the mental condition of the insured was of the character which the Court below said would render him irresponsible for his act is not sufficient proof that the self-destruction was "the direct result of disease."

Certainly the burden of proof is upon the plaintiff to show that the death of the insured was within the risks covered by the policy. It being shown that the death was a case of self-destruction, the plaintiff could not recover without showing that it came under the exceptions.

The burden, therefore, was upon the plaintiff to produce whatever proof was necessary, and if he failed in this, he was not entitled to recover. It is true that in a scientific, medical sense insanity is the manifestation of some disease of the brain; and it is also true, as was said by this Court in the case of Ins. Co. vs. Crandal, 120, U. S. 527, that in the case of self-destruction, the direct cause of the death is the means employed to destroy life, and that therefore it cannot be said to be the direct result of disease.

Still, it is evident that the expression "direct result of disease" in the policy was not used in this sense; nor was the term "insanity" used by the Court, nor could it have been understood by the jury, in the scientific sense above quoted.

We submit that it was the intention of the Company to include among the risks assumed self-destruction by accident or by a person whose reason was destroyed by the direct result of disease, and to exclude all others.

The term "insanity" neither in general use, nor, in the connection in which it was used by the Court below, has the limited technical meaning given to it by medical experts as above quoted.

Blackstone describes an insane person as one who hath had understanding, but by disease, *grief, or other accident*, hath lost the use of his reason." Blackstone's Commentaries, Book 1, page 304.

According to Lord Coke, it includes one "who by his own vicious act for a time depriveth himself of his memory and understanding, as he that is drunken."

Hunt, J., in delivering the opinion of this Court in Ins. Co. vs. Terry, *supra* (see page 588), says the causes of insanity are as varied as the varying circumstances of man:

> "Some for love, some for jealousy,
> For grim religion some, and some for pride,
> Have lost their reason; some for fear of want,
> Want all their lives; and others every day,
> For fear of dying, suffer worse than death."

And the same idea was expressed by Gray, J., in delivering the opinion in Ins. Co. vs. Crandal, 120 U. S. 527 (page 532).

Therefore, when the learned judge of the Court below, in his answer to defendant's third point, instructed the jury that if the insured was insane at the time of taking the poison, plaintiff was entitled to recover, he committed an error, which seriously prejudiced defendant's case. For

we submit that unless such insanity was the direct result of disease, it would not bring the self-destruction within the terms of the policy.

But the Court went beyond this. The jury were instructed that if "the mind of the insured was so far deranged as to have made him incapable of using a rational judgment," or "if he was impelled to the act by an insane impulse," or "if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties," the plaintiff was entitled to recover. Clearly the effect of this was to subject the Company to a risk which it had not assumed. Clearly a man's mind may be "so far deranged," or "his reasoning faculties so far overthrown," as to make him incapable of using a rational judgment, without it being the direct result of disease. Rage, fear, grief, drunkenness, and many other causes could produce such condition, whether the expressions are used with technical accuracy or in their popular sense, and it is equally clear that it was from just such risks that the Company desired to protect itself.

This effect was intensified rather than weakened by the following sentence. Instructing the jury in this connection, that, "if the insured, however excited, or angry, or depressed in mind, formed a determination to take his own life, because in the exercise of his usual reasoning powers he preferred death to life, then the defendant is not liable," was in effect to say to them that if through excitement or anger or depression of mind from any cause, his reasoning powers were so deranged or overthrown, that he could not exercise his usual reasoning powers, defendant was liable.

It was clear from the evidence that the mental condition of the insured which the plaintiff relied upon as an excuse for the self-destruction, was not produced by disease, but was the result of disappointment; that he was distressed at the postponement of his wedding, and probably worried

about his financial affairs; and if his reasoning faculties were impaired or overthrown, it was from this cause alone.

The failure of the Court, therefore, to make the distinction, was an error which materially prejudiced defendant's case.

It is therefore respectfully submitted that the action of the Court in qualifying defendant's third point, was erroneous, and that the third assignment of error should be sustained.

GEO. W. GUTHRIE,
Attorney for Plaintiff in Error.

150 U.S. 468

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OCT. TERM, 1893 SUPREME COURT U. S.
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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

TERM NO. 100.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error, Defendant Below,

VERSUS

C. H. AKENS, Executor of A. O. Smith, Deceased, Defendant in Error, Plaintiff Below.

In Error to the Circuit Court of the United States for the Western District of Pennsylvania.

BRIEF OF DEFENDANT IN ERROR.

D. B. ~~W. L. T.~~ KURTZ,
C. H. AKENS,
Attorneys for Defendant in Error.

In the Supreme Court of the United States.

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VERSUS

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In Error to the Circuit Court of the United States for the Western District of Pennsylvania.

ARGUMENT FOR DEFENDANT IN ERROR.

By the printed record in this case furnished by the Clerk of this Court, it appears that no assignment of errors was filed in the Court below and certified with the record as required by Section 997, Rev. Stat. and by the Rules of this Court.

We are, therefore, not advised by this record what alleged errors in the Court below are intended to be argued and relied upon by the plaintiff in error. We have no means of learning what questions may be con-

troverted in this Court but by reference to the bill of exceptions.

These involve four alleged errors in the Court's answers to the first, second, third and ninth points submitted at the trial by the plaintiff in error, and raise the same questions considered and decided by this Court in Life Insurance Co. vs. Terry, 15 Wall. 580.

I & II EXCEPTIONS.

The first and second exceptions are to the refusal of the Court to affirm the first and second points submitted. These two points are the same propositions submitted to, and refused by the Trial Court in the Terry case, as the following comparisons will show:—

FIRST POINTS.

IN CASE AT BAR.	IN TERRY'S CASE.
"*That* if the jury believe from the evidence in the case that *A. O. Smith, the insured*, destroyed his own life, and that at the time of self-destruction he had sufficient capacity to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case, the plaintiff cannot recover on the policy *sued* on in this case." (*Refused—1st exception.*)	"If the jury believe from the evidence in the case, that *the said Geo. Terry* destroyed his own life, and that, at the time of self-destruction, he had sufficient capacity to understand the nature of the act which he was about to commit, and the consequences which would result from it, then, and in that case, the plaintiff cannot recover on the policy *declared* on in this case." (*Refused—and on error refusal affirmed.*

SECOND POINTS.

IN CASE AT BAR.

"That if the jury believe from the evidence that the self-destruction of the said *A. O. Smith* was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity, which impaired his sense of moral responsibility and rendered him to a certain extent irresponsible for his action."

(*Refused—2nd exception.*)

IN TERRY'S CASE.

"That if the jury believe from the evidence that the self-destruction of the said *George Terry* was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit, and the consequences which would result from it, then, and in that case, it is wholly immaterial in the present case that he was impelled thereto by insanity, which impaired his sense of moral responsibility, and rendered him, to a certain extent, irresponsible for his action."

(*Refused—and on error refusal affirmed.*)

III EXCEPTION.

The third point submitted was affirmed, but with an explanation or exception added by the Court. Error is alleged in a particular part of this explanation or addition. Nearly all the Court said to the jury on the question of the insanity or state of mind of the insured is embodied in the answer to this point, and is mainly copied from the decisions of this Court. That part of the answer in which error is alleged is substantially the

same language used by the Trial Court, excepted to and affirmed by this Court in Terry's case.

The third point is as follows :—

"That if the jury believe from the evidence that A. O. Smith's life was ended February 23d, 1887, by means of laudanum poison, administered by himself to himself, the plaintiff cannot recover on the policy sued upon in this case, unless the jury believe also from the evidence that the self-destruction aforesaid of said Smith was the direct result of disease, or of accident occurring without his voluntary action."

It is to be noted that the third exception does not set out the whole of the Court's answer to this point.

We quote the entire answer, with that part of it which is embraced in the third exception arranged in a column paralell with an extract from the charge of the Trial Court in Terry's case, there excepted to, and afterwards affirmed by this Court :— (The verbal differences being in italics.)

"That point is answered in this way, and it embodies pretty much all the Court has to say to you upon the state of mind, or insanity, which will releive a person who commits self-destruction from responsibility for that act.

CHARGE IN TERRY'S CASE.	
It is not every kind or degree of insanity which will so far excuse the party takng his own life as to make the company insuring liable.	*The third point is affirmed, with this exception; that if*
To do this,	the act of self-destruction
the act of self-destruction	

was the result
of insanity
and was with suicidal intent
and the mind of the *insured was* so far
deranged as to have made him incapable of using a rational judgment in regard to the act he was *about to commit*,
the defendand is liable, *but* if he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to *commit* the *defendant* is liable.
If, from the evidence,
you believe that the *insured*, *though* excited or angry or *depressed* in mind *from any cause*,
formed the determination to take his own life, because in the exercise of his usual reasoning faculties he preferred death to life, then the *defendant* is not liable.
(*Excepted to—3d exception.*)

must have been the consequence of the insanity.

And the mind of the *decedent must have been* so far deranged as to have made him incapable of using a rational judgment in regard to the act *which* he was *committing*.

If he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to *do* the *Company* is liable. * * * *And* if you believe from the evidence that the *decedent*, *although* excited or angry, or *distressed* in mind,
formed the determination to take his own life, because, in the exercise of his usual reasoning faculties, he preferred death to life, then the *company* is not liable."
(*Excepted to—and on error affirmed.*)

Now, you will observe, gentlemen,

that it is not every degree of insanity that will have the effect of avoiding a condition such as is contained in this policy. There must be insanity to such a degree as I have indicated in my answer to this point. It must be insanity, or a derangement of the mind, which incapacitates him from forming a rational judgment in regard to his act, its nature and consequences, its moral effect; or if it is done under an insane impulse, that his reasoning powers were so far overthrown at the time, by his mental condition, that he could not exercise his reasoning faculties on this act. If he did form the determination to take his own life because, under all the circumstances in evidence, death to him, in his insane judgment, it might be, was preferable to life, then the defendant is not liable for the amount claimed, and the insured was responsible as a sane man for all the consequences of his own act. That is the turning point of this whole controversy. Just as you find the evidence in regard to the condition of the mind of the insured you find for the plaintiff or defendant.

I repeat, gentlemen, because it is important that you should have a clear understanding of the law on this point, that in the answer to the point which I have just read to you I have copied mainly the language of the Supreme Court, so that it is the supreme law of the land, by which we are all governed, Juries as well as Courts."

This point is evidently based on the suicide clause of the policy which reads as follows:—

"Suicide—The self-destruction of the insured, in any form, except upon proof, that the same is the direct result of disease, or of accident occurring without the voluntary act of the insured."

This proviso is introduced by the word "suicide," indicating the subject matter to which the proviso refers.

Then follow the words, "the self-destruction of the insured." "Self-destruction" means to destroy ones self, to kill ones self, to die by one's own hand, to commit suicide, is used to avoid repetition, and does not qualify "suicide," the title word, standing as the verbal exponent of what the language in the proviso is intended to mean.

Phadenhauer vs. Germania Life Ins. Co. 7 Heiskell 567.

"Die by suicide," "Die by his own hand," or "by self-inflicted injuries," "Takes his own life," etc., in a provision for forfeiture in a life insurance policy has reference to an act done by a sane person.

Accident Ins. Co. vs. Crandal 120 U. S. 527.
Manhattan Ins. Co. vs. Broughton 109 U. S. 121.
Insurance Co. vs. Rodel 95 U. S. 232.
Bigelow vs. Berkshire Ins. Co. 93 U. S. 284.
Life Ins. Co. vs. Terry 15 Wall. 580.
Breasted vs. Farmers' Loan and Trust Co. 4 Hill 73.
Supreme Commandery K. G. R. 71 Ala. 436.
And also cases cited on page 20 of this book.

Hence the act inhibited by this proviso, whether the same be defined by the term "suicide" or the term "self-destruction," is nevertheless an act done by a sane person.

The succeeding phrase, "in any form," refers to the manner or method of doing the act introduced and defined by the preceding words; as by shooting, drowning, taking poison, hanging, etc.

Then follow the concluding words: "except upon proof, that the same is the direct result of disease, or of accident occurring without the voluntary act of the insured."

"Except" is used in the sense of *unless*, and the

counsel for the plaintiff in error has so interpreted it in framing the third point submitted to the Court which is formulated on this language.

On these inhibited acts, the Company, in this language, undertakes by agreement to repel the presumption of fact arising under the established rules of law, and by thus requiring proof that the self-destruction was the "direct result of disease, or of accident occurring without the voluntary act of the insured," to shift the burden of proof from itself to the claimant.

Traveler's Ins. Co. vs. McConkey 127 U. S. 661.

Clearly this proviso will bear but one construction, viz:

1. It refers to the acts of sane persons,

2. It has no reference to the acts of insane persons; and in this view we are not without authority:

Phadenhauer vs. Germania Life Ins. Co. 7 Heiskell 567. Proviso—"If he shall die by suicide, or by his own hands."

Shultz vs. Ins. Co. 40 Ohio St. 217. Proviso—"Shall under any circumstances die by his own hand."

New Home Association vs. Hagler 29 Ill. App. 437. Proviso—"Shall die by reason of any act of self-destruction whatever."

Jacobs vs. Life Ins. Co. 5 Big. Life & Acc. Cases 42. Proviso—"Shall die by his own hand, or act voluntary or otherwise."

This is the natural interpretation of the language of this proviso, and is the construction put upon it by the learned Judge of the Court below.

And we submit that this construction is in harmony with the general and well recognized principles of interpretation of contracts of insurance. In Teutonia

Fire Ins. Co. vs. Mund 102 Pa. St. 89, the Court say (p. 95.):—

> "Indemnity is the real object and purpose of all insurance, that is what the assured bargains for and what the insurer intends to provide. Says Phillips on Insurance, Sect. 124: 'The predominant intention of the parties in a contract of insurance, is indemnity, and this is to be kept in view and favored in putting a construction upon the policy.' * * Having indemnity for its object the contract is to be construed liberally, to that end, and it is presumably the intention of the insurer that the insured shall understand, that in case of loss he is to be protected to the full extent which any fair interpretation will give."

And on p. 94: "If there be doubt, in view of the general tenor of an instrument of writing, whether the words used therein are to be taken in an enlarged or restricted sense, all other things being equal, that construction should be taken which is most beneficial to the promisee. This rule of construction is perhaps especially applicable to the construction of policies of insurance, the provisions and conditions of which are, as admitted in the argument, prepared by the assurers themselves, and their advisors, persons thoroughly conversant with the principles and practice of insurance, with the utmost deliberation, "every word being weighed, and every contingency debated," and, thus prepared, are executed and delivered to the assured, who ordinarily has no part in their preparation.

Therefore, in Western Ins. Co. vs. Cropper 32 Pa. St. 351, it is held, 'that if an exeeption in a policy be capable or two interpretations, equally reasonable, that must be adopted which is most favorable to the assured, for the language is that of the assurer.' This principle is approved and

recognized in Comth. Ins. Co. vs. Berger et. al. 42 Pa. St. 292 ; Ins. Co. vs. O'Mally 82 Pa. St. 400. To the same effect is Hoffman vs. Ætna Fire Ins. Co. 32 N. Y. 405, where it was held, that no rule in the interpretation of a policy is more fully established, or more imperative or controling than that which declares that in all cases it must be liberally construed in favor of the assured, so as not to defeat, without a plain necessity, his claim to the indemnity, which in making the insurance it was his object to secure. When the words are, without violence, susceptible of two interpretations, that which will sustain his claim and cover the loss, must in preference be aodpted."

Wood on Fire Insurance, Sec. 59.
Natl. Bank vs. Ins. Co. 95 U. S. 678.
Travelers' Ins. Co. vs. McConkey 127 U. S. 661.
See opinion, p. 666, and cases cited.

The point submitted in the present case requested the Court to charge, "that if the jury believe from the evidence that A. O. Smith's life was ended February 23d, 1887, by means of laudanum poison administered by himself to himself, the plaintiff cannot recover on the policy sued upon in this case unless the jury believe also from the evidence, that the self-destruction aforesaid of said Smith was the *direct result of disease or of accident occurring without his voluntary action.*"

That part of the point in italics is taken from the suicide clause of the policy, and requested the Court to charge that this suicide clause included a self-killing by the insured, whether he was sane or insane, and thus made the exception or qualification by the Court necessary.

To this request the Court answered, "affirmed, with this exception," and quoted the language of the trial

court in Terry's case, as proper instruction to the jury on the issue of insanity.

It is to this part of the Court's answer qualifying the affirmance that this third exception is taken.

Thus in the two points refused, and in the answer of the Court to the third point, we have the same three questions that were directly involved and decided in Terry's case.

In that case the character and extent of insanity or mental unsoundness that must exist in order to relieve the insured from responsibility for his action under contracts of this kind were fully considered and in an exhaustive opinion reviewing all the cases, the following conclusion was reached :—(p 590)

> "We hold the rule on the question before us to be this :—
> If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery.
>
> If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse, which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable."

In support of this rule we will not presume to add to the convincing argument found in the opinion of Justice Hunt in deciding the case.

Suicide is called "self-murder" in terms in Webster, and is defined to be "the act of designedly destroying one's own life, committed by a person of years of discretion and of sound mind."

> "A sound mind has been held to be one free from all delusion, when all the intellectual faculties exist in the usual and proper degree of harmony and vigor, and when the passions, affections, and propensities are under the subordination of the judgment and the will."

McElroy's Case, 6 Watts & Sergeant, (Pa.) 451 (455.)

> "In law a man is insane when he is not capable of understanding, 1st, that a design is unlawful, or that an act is morally wrong; or 2d, understanding this, when he is unable to control his conduct in the light of such knowledge."

Waters vs. Conn. Mut. Life Ins. Co. 2 Fed. Rep. 892.

> "Insane persons are not idiots; they have intelligence; but it is perverted intelligence. They reason; but it is not the reasoning of sanity, but of insanity. Insane persons may form plans and execute them, and manifest great shrewdness and mental activity, both in forming and executing them. Insanity does not destroy the intellect—it perverts it, and often renders it more active than when it is in its normal condition. But it is not a sound and healthy mind that is operating, but an unsound and diseased one. It does not follow, that because we see that an insane man knows that if he blows his brains out it will kill him, and that he does that act for that purpose, that therefore the act was that of a sane mind, voluntarily and deliberatively done."

Hathaway vs. National Life Ins. Co. 48 Vt. 335.

In Conn. Mut. Life Ins. Co. vs. Groom, 86 Pa. St. 92, Mr. Justice Woodward says: (p. 97.)

"Self-destruction, under insane impulses so strong as to be beyond the control and restraint of the will, is a result produced by disease, for which the victim of it is no more morally responsible than he would be for any other of the maladies of which men die. The disease, when it manifests itself in that form of melancholia, which creates a prevailing propensity to suicide, consists in the unfounded and morbid fancies of the sufferer regarding his means of subsistence or his position in life, or in distorted conceptions of his relations to society or his family, of his rights or duties, or of dangers threatening his person, property or reputation. 'When the melancholic hallucination has fully taken possession of the mind,' says Abercrombie, 'it becomes the sole object of attention, without the power of varying the impressions or of directing the thoughts to any facts or considerations calculated to remove or palliate it. The evil seems overwhelming and irremediable, admitting neither of consolation nor hope. For the process of mind calculated to diminish such an impression, or even to produce the hope of a palliation of the evil, is precisely that exercise of mind which, in this singular condition, is lost or suspended, namely, the power of changing the subject of thought, of transferring the attention to other facts or considerations, and of comparing the mental condition with these, and with the actual state of things. Under such a conviction of overwhelming and hopeless misery, the feeling naturally arises of life being a burden, and this is succeeded by a determination to quit it. When such an association has once been formed it also fixes itself upon the mind, and fails to be corrected by those considerations which ought to remove it.' Wharton & Stille's Med. Jnr. Sect. 206. When the dis-

ease attains a stage at which the mental power to judge of the moral nature of the act is entirely gone, self-destruction does not become suicide in the sense of self-murder. Such an act has never involved criminal responsibility and punishment, and it should not be followed, except under express stipulation, by a forfeiture of contract rights. The rule adopted by Willard, J., in Breasted vs. Farmers' Loan Co., 2 Am. Law Reg. 358, was a safe and just one. 'It must occur to every prudent man seeking to make provision for his family by an insurance on his life, that insanity is one of the diseases that may terminate his being. It is said the defendant did not insure the continuance of the intestate's reason. Nor did they, in terms, insure him against small-pox or scarlet fever ; but had he died of either disease, there is no doubt that the defendants would have been liable. They insured the continuance of his life. What difference can it make to them or to him whether it is terminated by the ordinary course of disease in his bed, or, in a fit of delirium, he ends it himself. In each case the death is occasioned by a means within the meaning of the policy, if the exception contemplates, as I think it does, the destruction of life by a rational agent, responsible for his act.'

But it has been urged that the steps taken by Mr. Boileau to destroy his life were consciously intelligent, and that he knew what the consequences of taking them would be. There is no doubt that he had such knowledge. His very purpose was to kill himself. Such a degree of intelligence may well co-exist with faculties so distorted and a mind so shattered by long-continued suffering as to inspire a morbid impulse, the nature of which the weakened judgment can not measure, and the execution of which the un-

certain and feeble will can not restrain."

In Ortwein vs. Comth. 76 Pa. St. 414 Judge Stowe (p. 421) says :

> Insanity "is a condition of the mind which renders it incapable of reasoning or judging correctly of its own impulses, and of determining whether they should be followed or resisted. As said by the present Chief Justice (Agnew,) 'intelligence is not the only criterion, for it often exists in the madman in a high degree, making him shrewd, watchful and capable of determining his purposes, and selecting the means of accomplishment.' Want of intelligence, therefore, is not the only defect to moderate the degree of offence, but with intelligence there may be an absence of power to determine properly the true nature and character of the act, its effects upon the subject and the true responsibility of the action ; a power necessary to control the impulse of the mind and prevent the execution of the thought that possesses it. In other words, it is the absence of that self-determining power, which in the sane mind renders it conscious of the real nature of its own purposes and capable of resisting wrong impulses."

> Death by one's hand in the case of a person *non compos*, is the result of disease. To provide for death by disease is the very object of life insurance.

Hancock Mut. Life Ins. Co. vs. Moore, 34 Mich. 45.

Breasted vs. Farmers' Loan & Trust Co. 59 Am. Dec. 482.

Eastabrook vs. Union Mut. Life Ins. Co. 54 Me. 227.

As is said in the note to Breasted vs. Farmers' L. & T. Co. 59 American Decisions 494:—

"The doctrine of Mutual Life Ins. Co. vs. Terry, supported as it is by a great preponderance of authority, must be conceded to be the prevailing American doctrine.

It certainly seems to us to be the safer, more reasonable, and more consistent doctrine. It accords with the general rule as to the excusatory effect of insanity in civil as well as in criminal cases. It also operates to prevent forfeiture, which is a favorite principle of an enlightened jurisprudence. Nor can it have any injurious effect, since insurers, who always frame such contracts to suit themselves, may if they choose insert express stipulations to the effect that insanity shall not in any case prevent an avoidance by suicide of the assured. If they prefer, for the purpose of getting custom, to omit such stipulations, and to leave the matter in doubt, the doubt ought to be resolved against them. If the assured is to take the sole risk of his becoming insane and destroying his life, let him have notice of the fact by having it clearly 'nominated in the bond.' As has been well said in some of the cases above referred to, insanity is as much a disease as fever or consumption; and upon principle, there is no more reason why an insurance of ones life should not be an insurance against death from the former disease than against death from the latter, if there is nothing to the contrary in the policy."

Terry's case is mentioned with approval in Bigelow vs. Berkshire Life Insurance Company 93 U. S. 284.

In Life Insurance Company vs. Rodel, 95 U. S. 232, the same questions, as those in the case at bar, were involved. The proposition, that the plaintiff could not recover if the assured knew that the act he was about to commit would result in death, and deliberately did it for

that purpose, was presented at the trial, refused, and an exception taken; an exception was also taken to that part of the charge of the trial Court which was quoted from the charge in Life Insurance Company vs. Terry, and which included the language used by the trial Court in the case at bar in answer to the third point.

In referring to that part of the case this Court said, page 241:

> "This charge is in the very words of the charge sanctioned and approved by this Court in the case of Life Insurance Company vs. Terry, 15 Wall. 580, including an explanatory clause of the opinion of the Court in that case. We see no reason to modify the views expressed by us on that occasion. We think, therefore, that there was uo error in the charge as given. It follows that the judge properly refused the request to charge that the plaintiff could not recover if the insured knew that the act which he committed would result in death, and deliberately did it for that purpose. Such knowledge and deliberation are entirely consistent with his being, in the language of the charge 'impelled by an insane impulse, which the reason that was left him did not enable him to resist,' and are therefore, not conclusive as to his responsibility or power to control his actions."

In Manhattan Life Ins. Co. vs. Broughton 109 U. S. 121, among other questions involved, the doctrine of Life Ins. Co. vs. Terry was directly attacked. The defendant company requested the trial Court to charge the jury: (Page 130.)

> "That if Israel Ferguson died by suicide, the plaintiff cannot recover, unless he has proved to your satisfaction that such act of self-destruction was not Ferguson's voluntary and wilful act; that he had not at the time sufficient power of mind and reason to understand the physical nature and consequences of such act, and did not have, at the time, a purpose and intention to cause his own death by the act;" "that unless the evidence established that Israel Ferguson did not commit suicide consciously and voluntarily, the plaintiff cannot recover;" and "that if he thus committed it, it is immaterial whether he was capable of understanding its moral aspects, or of distinguishing between right and wrong."

The Court declined to give these instructions and read to the jury the instructions given in Terry's case, which included that part used by the trial Court in the case at bar in answering the third point submitted.

And on error this Court said in reference thereto, page 131,

> "These instructions are in exact accordance with the adjudications in the cases of Terry and Rodel; and upon consideration we are unanimously of opinion that the rule so established is sounder in principle, as well as simpler in application, than that which makes the effect of the act of self-destruction, upon the interests of those for whose benefit the policy was made, to depend upon the very subtle and difficult question how far any exercise of the will can be attributed to a man who is so unsound of mind that, while he foresees the physical consequences which will directly result from his act, he cannot understand its moral nature and character, or in any just sense be said to know what it is that he is doing."

In Accident Ins. Co. vs Crandal 120 U. S. 527, in speaking of the effect of a policy of life insurance, which provides that it shall be void if the assured "shall die by suicide," or, "shall die by his own hand," this Court said, page 531 ;

> "This Court, on full consideration of the conflicting authorities upon the subject, has repeatedly and uniformly held that such a provision, not containing the words "sane or insane," does not include a self-killing by an insane person, whether his unsoundness of mind is such as to prevent him from understanding the physical nature and consequences of his act, or only such as to prevent him, while foreseeing and premeditating its physical consequences, from understanding its moral nature and aspect."

The conflict of opinion existing at the time Terry's case was decided has now almost entirely disappeared. The rule there laid down by Mr. Justice Hunt, being simple, reasonable and just, has won its way into the decisions of nearly all the superior Courts of the United States.

For twenty years it has furnished a safe guide for insurer and insured in making contracts of life insurance.

Its doctrine is approved and followed in express terms or in substance in the following cases :—

Phadenhauer vs. Germania Life Ins. Co. 7 Heisk. 567. (Tenn. 1872); same case 19 Am. Rep. 623.

Moore vs. Conn. Mut. Life Ins. Co. 3 Ins. L. J. 444. (U. S. C. C. East. Dist. Mich. 1874.) S. C. 4 Big. Life and Acc. Ins. Cases 138.

Merritt vs. Cotton States Life Ins. Co. 55 Ga. 103, (1875).

Life Association of Am. vs. Waller 57 Ga. 533. (1876).

Conn. Mut. Life Ins. Co. vs. Groom 86 Pa. St. 92 (1878); S. C. 27 Am. Rep. 689; 7 Ins. Leg. J. 597.

Hiatt vs. Mut. Life Ins. Co. 2 Dill. 572.

Coverston vs. Conn. Mut. Life Ins. Co. 4 Big. Life & Acc. Ins. Cases 169.

Jarvis vs. Conn. Mut. Life Ins. Co. 5 Ins. L. J. 507; (U. S. C. C. North. Dist. Ill.) S. C. 6 Ins. L. J. 311.

Phillips vs. Louisiana, etc. Ins. Co. 26 La. Ann. 404 Same case 21 Am. Rep. 549.

John Hancock Mut. Life Ins. Co. vs. Moore 34 Mich. 41.

Bank of Oil City vs. Guardian Mut. Life Ins. Co. 5 Big. Life and Acc. Ins. Cases 478.

Hathaway vs. Nat. Life Ins. Co. 48 Vt. 335.

Waters vs. Conn. Mut. Life Ins. Co. 2 Fed. Rep. 892 (1880), (U. S. C. C. Dist. N. J.); S. C. 9 Ins. L. J. 337.

Schultz vs. Ins. Co. 40 Ohio St. 217 (1883).

New Home Association vs. Hagler 29 Ill. App. 437 (1888).

Blackstone vs. Standard Co. 74 Mich. 593 (1889).

Scheffer vs. Nat. Life Ins. Co. 25 Minn. 534.

Supreme Commandery K. G. R. vs. Ainsworth 71 Ala. 436.

In Nimick vs. The Mut. Ben. Life Ins. Co. 3 Brewster 502, S. C. 1 Big. Life & Acc. Ins. Cases 68, Justice McKennan who presided at the trial of the case at bar, charged the jury in that case; that if the assured comprehended the physical nature and consequences of the act, and intended to destroy his life, the policy was void,

although he did not comprehend the moral nature of the act.

That case was decided in January, 1871, and is referred to in the opinion in Terry's case decided the next year. In the present case the same learned Judge refused to follow the doctrine of his previous charge as requested in the points submitted, but charged the jury in accordance with the rule laid down in cases of Terry and of Rodel.

IV. EXCEPTION.

The fourth and last exception is: the Court erred in not charging, that,

> "Under all the evidence in this case, the verdict of the jury should be for the defendant."

The question of the sufficiency of the evidence has been thoroughly discussed and several times decided in the history of this cause. The plaintiff in error succeeded in having it passed upon three times by the Trial Court.

1. Justices McKennan and Acheson having all the witnesses before them during the four days of the trial, hearing their testimony, and observing their appearance, manner and conduct, were requested to instruct the jury that under all the evidence in the case the verdict should be for the Company, but refused.

2. Upon a motion for a new trial, the only reason assigned being, "that the verdict was contrary to the weight of evidence," the question was elaborately argued and the motion refused. Record pp. 1, 2.

3. A lengthy petition, reciting all the elements of

the former arguments, and praying for a re-hearing of the motion for a new trial, was presented, entertained and refused. Record p. 2.

At that time the errors now alleged in the 1st, 2nd and 3rd exceptions were evidently not considered of sufficient importance by the plaintiff in error to be included as reasons for a new trial.

The jury passed upon the sufficiency of the evidence under the following instructions from the Court upon request of the plaintiff in error:—

Sixth point—

"There is no presumption of law, *prima facia*, or otherwise, that self-destruction arises from insanity, and if the jury find from the evidence that the deceased, A. O. Smith, though greatly disturbed in mind, because of the breaking off of his marriage engagement with Miss Genkinger, or the delay or postponement of the contemplated marriage, or from his alleged insolvency and embarrassment, or from his alleged forgery of the Archibald Smith note, or from any other cause whatsoever, formed the determination to take his own life, and did administer poison whereby he died, because in the exercise of his usual reasoning faculties he preferred death to life, then the Company is not liable in this suit, because his act of self-destruction was within the meaning of the policy."

"This point is affirmed, and you are so instructed."

Seventh point—

"The burden of proving mental derangement or impairment is on the plaintiff."

"This point is affirmed."

Eighth point—

> "In view of the presumption of sanity, the evidence to establish insanity should be satisfactory and convincing, and in the absence of such testimony the jury should find in favor of the presumption of sanity."
>
> "That is to say, gentlemen, that every person is presumed to be of sound mind, and whoever alleges the contrary to that must show it by satisfactory and convincing proof.
>
> "So that as Mr. Smith was confessedly at one time, and up to a period shortly anterior to his death, of sound mind, that condition is presumed to continue until its destruction by satisfactory and convincing evidence by the person who alleges such changed state of mind."

The Company could not have asked for anything more favorable, on this feature of the case, than the instructions contained in these points and answers, and yet with their attention thus specially called to these positions, the jury rendered a verdict in favor of the plaintiff below. The jury thus found not only that there was evidence of insanity, but that such evidence was "satisfactory and convincing." And this finding the Court on the motions for new trial refused to say, "was contrary to the weight of evidence."

Further, the plaintiff in error in his bill of exceptions on which he comes into this Court, admits and alleges that the plaintiff below in support of the issue presented in the replication to defendent's plea,

> "Called witnesses, to-wit:—Dr. J. L. Cooper, C. B. Welsh, and others, who gave testimony tending to prove the truth of the allegations in the plaintiff's replication, viz: that the reasoning

> faculties of said A. O. Smith at the time he took laudanum, to-wit: Februrary 22d, 1887, were so far impaired that he was not able to understand the moral character, nature, effect, and consequences of the act he was about to commit." (*Record page 36.*)

This fourth exception is in the nature of a demurrer to the evidence, and assumes that, if all the evidence be true there was not sufficient to warrant the verdict, and that the Court, therefore, erred in submitting the evidence to the jury. This is a question of law, but to determine it, this Court must necessarily have the evidence before it to ascertain whether or not it was such as to warrant its submission.

A question of law cannot arise, in a judicial sense, without facts. And the facts out of which the question arises or springs, must be seen in the record furnished either by a case stated, a special verdict, or by the bill of exceptions to enable a Court of error to review it. The bill of exceptions in this case does not bring up the evidence and make it a matter of record. It is not therefore, before the Court, and the Court cannot inquire whether the Trial Court erred in refusing to charge that, "under all the evidence in this case the verdict of the jury should be for the defendant."

> "No question of fact can be re-examined in this Court on a writ of error, unless the evidence is brought into the record by a bill of exceptions, or some method known to the practice of Courts of error for that purpose is adopted, such as, for instance, an agreed statement of facts, or a special finding in the nature of a special verdict."
>
> Elgland vs. Gebhardt, 112 U. S. 502.
>
> Suydam vs. Willlamson *et al* 20 How. 427.

In Grand Trunk Ry. Co. vs. Ives, 144, U. S. 480, the request for instruction in the Trial Court was substantially the same as in the case at bar :— (p. 415,)

> "The Court is requested to instruct the jury that under the evidence in this case the plaintiff is not entitled to recover, and their verdict must be for the defendant."

This was refused, and this Court, in opinion by Mr. Justice Lamar, say (p. 415.)

> "This assignment of error is two broad and general, under the 21st rule of this Court, to bring up such a specific objection as it seeks to do. This Court should not be put to the labor and trouble of examining the whole of the evidence to see whether there was enough for the verdict below to have rested upon. But any objection made to the non-existence of evidence to support the verdict and judgment below should, in the language of the rule, 'set out specifically and particularly each error asserted and intended to be urged.' Van Stone vs. Stillwell & Bierce Manufacturing Company, 142 U. S. 128. In our opinion, therefore, this point raised by the plaintiff in error is without merit."

In Texas & Pacific Railway Company vs. Cox, 145 U. S. 593, the fourth error assigned was : "The refusing to direct the jury to find for the defendant" (p. 597). In opinion of this Court thereon (p. 606), it is safd :

> "The bill of exceptions does not purport to contain all the evidence, and it would be improper to hold that the Court should have directed a verdict for defendants for want of that which may have existence."

This Court will not examine evidence to ascertain

whether a jury was justified in finding, as it has done, on an issue of fact.

Express Company vs. Ware, 20 Wall. 543.
Woodrnff vs. Hough et al., 91 U. S. 596.

> "Whether the evidence before the jury does or does not sustain the allegations in a case is a matter wholly within the province of the jury, and if they find in one way, this Court can not review their finding."
>
> Gregg vs. Moss, 14 Wall. 564.

Where a party has a verdict against him on insufficient evidence, his remedy is by motion for new trial. He has no remedy in a court of error.

The City vs. Babcock 3 Wall. 240.

Where there is evidence tending to establish the issues on the plaintiff's part, it is error to take the case from the jury.

United States vs. Chidester, 140 U. S. 49.
Hickman vs. Jones *et al*, 9 Wall. 197.

In Ins. Co. vs. Rodel, 95 U. S. 232, in the opinion of the Court by Mr. Justice Bradley, (p. 237,) it is said :

> "It is hardly necessary to say, that, if there was any evidence tending to prove that the dedeceased was insane when he took the poison which caused his death, the judge was not bound to, and indeed could not properly, take the evidence from the jury. The weight of the evidence is for them, and not for the judge to pass upon."

And in Conneticut Mutl. Life Ins. Co. vs. Lathrop, 111 U. S. 612, in the opinion of Mr. Justice Harlan, (p.

615,) the same language is quoted, and Phœnix Ins. Co. vs. Doster, 106 U. S. 30 is cited. See also Manhattan Life Ins. Co. vs. Broughton 109 U. S. 121 (127.)

Our apology for the length of this argument is, as indicated at the beginning, the want of an assignment of errors. Left to the uncertain field of the bill of exceptions, we felt called upon to consider, in order, all the exceptions—four in number.

The plaintiff in error not having brought the evidence into the record by the bill the 4th exception may be considered as abandoned.

The 1st, 2nd and 3rd exceptions are identically the same as those taken in the Terry case, and there overruled.

In view of the fact that the doctrine declared in that case has been uniformly approved and followed by this Court for over twenty years, and recognized and adopted by nearly all the State Courts, we suggest that the object sought in suing out this writ was delay.

The dilatory proceedings on the part of the plaintiff in error since the trial furnish additional evidence of its purpose and intention.

1889, May 18, Verdict rendered.

1889, May 22, Motion for new trial filed.

1889, June 25, Motion for new trial argued.

1889, June 28, Motion for new trial denied.

1889, June 28, Judgment entered on the verdict.

1889, July 8, Petition, with reasons, for a re-argument of motion for a new trial filed.

1889, Aug. 12, Rule granted.

(This rule was not issued, no answer made, no hearing had, but)

1889, Dec. 18, Rule granted, is discharged.

1890, Feb. 11, Bill of exceptions filed, writ of error allowed and issued.

(*See Record pages* 1, 2.)

We, therefore, respectfully submit that the judgment should be affirmed and damages in addition to interest should be awarded upon the amount of the judgment, as per sect. 2, Rule 23.

Since the preparation of the foregoing, we have received a copy of the argument of plaintiff in error.

In answer to his position that the Court erred in refusing to affirm the ninth point, that "under all the evidence in this case the verdict of the jury should be for the defendant," for the reason that there was no sufficient evidence of death or loss furnished to the company, or produced upon the trial, we reply:

The suit was commenced and statement of claim filed in the State Court under the Act of Assembly of Pennsylvania, entitled:

> "An Act providing for the abolition of the distinctions heretofore existing between actions *ex-contractu* and actions *ex-delicto*, so far as relates to procedure, and providing for two forms of actions, and regulating the pleadings thereunder." (*Approved May 25, 1887.*)
>
> "SEC. 1. *Be it enacted &c.*, That, so far as relates to procedure, the distinctions heretofore existing between actions *ex-contractu* be abolished, and that all demands, heretofore recoverable in debt, assumpsit or covenant, shall hereafter be

sued for and recovered in one form of action, to be called an 'action of assumpsit."

"SEC. 2. That, so far as relates to procedure, the distinctions heretofore existing between actions *ex-delicto* be abolished, and that all damages, heretofore recoverable in trespass, trover or trespass on the case, shall hereafter be sued for and recovered in one form of action, to be called an "action of trespass."

"SEC. 3. The plaintiff's declaration in each of the said actions, namely, the action of assumpsit and the action of trespass, shall consist of a concise statement of the plaintiff's demand, as provided by the fifth section of the act of the twenty-first day of March, Anno Domini one thousand eight hundred and six, which, in the action of assumpsit, shall be accompanied by copies of all notes, contracts, book entries, or a particular reference to the records of any court, within the county in which the action is brought, if any, upon which the plaintiff's claim is founded, and a particular reference to such record, or to the record of any deed, or mortgage, or other instrument of writing recorded in such county, shall be sufficient in lieu of the copy thereof. The statement shall be signed by the plaintiff or his attorney, and in the action of assumpsit shall be replied to by affidavit."

"SEC. 4. The plaintiff shall be at liberty, in each of said actions, to serve a copy of his statement on the defendants. If such service be made not less than fifteen days before the return day of the writ, it shall be the duty of the defendant in the action of assumpsit to file an affidavit of defense on or before the return day."

"SEC. 5. In the action of assumpsit, judgment may be moved for for want of an affidavit of de-

fense, or for want of a sufficient affidavit, for the whole or part of the plaintiff's claim, as the case may be, in accordance with the present practice in actions of debt and assumpsit."

"SEC. 6. If the plaintiff shall neglect to serve his statement at least fifteen days before the return day of his writ, he may file it on or at any time after the return day, and, in the action of assumpsit, unless the defendant shall file a sufficient affidavit of defense within fifteen days after notice that the said statement has been filed, the plaintiff may move for judgment for want thereof."

The Supreme Court of Pennsylvania has construed this Act in numerous decisions. In Heller vs. Royal Ins. Co., Pa. St. 101 (1892), on page 105, it is said by the Court;

"The third section of our procedure act of 1887 declares that in 'the action of assumpsit and the action of trespass' the declaration 'shall consist of a concise statement of the plaintiff's demand,' etc. It further declares: 'The statement shall be signed by the plaintiff or his attorney, and, in the action of assumpsit, shall be replied to by affidavit.' When defendant company was required to make its reply to the plaintiff's statement, the first thing to be considered was the sufficiency of the statement. If deemed insufficient to maintain the suit, that ground of defence, at least, in the nature of a demurrer, should have been clearly disclosed in the reply, so that it might have been disposed of in limine. If well taken, it would have ended the case. Instead of that a general defence on the supposed merits of the case was interposed and we were called upon to say whether, assuming all the allegations of fact contained in the affidavit to be true, they con-

stituted a good defence. Holding that they did, we reversed the judgment of the court below and returned the record with a procedendo. In effect, for the time being at least, the defendant then abandoned the defence set up in its affidavit, and upon which it had asked us to pass, and demurred to plaintiff's statement of claim, and now we are passing on the sufficiency of that. We are unwilling to recognize this as proper practice.

"In Barr v. McGary, 131 Pa. 406, our Brother Williams, after referring to the kind of statement required by the act, says: 'The defence must then be stated and verified by the oath of the defendant. This makes up the issue on which the case is to go to trial, and if the defence set out is insufficient to prevent a recovery, the plaintiff may ask judgment for want of a sufficient affidavit of defence,' etc."

The case was subsequently removed to the Circuit Court on the ground of the diverse citizenship of the parties.

By Sec. 914 of the Revised Statutes of the United States it is enacted:

"The practice, pleadings and forms and modes of proceedings in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of court to the contrary notwithstanding."

We contend that the defendant, not having raised

this alleged defence by its affidavit, and having therein specified the grounds of its defence, is limited thereto.

Further, there is no bill of exception showing that any such question or objection was raised in the trial court, or upon which the evidence relating thereto is brought upon the record.

> "A general exception to a charge, which does not direct the attention of the Court to the particular portions of it to which objection is made, raises no question for review by this Court."
>
> Burton vs. West Jersey Ferry Co., 114 U. S., 474.

The fourth assignment of error is too general to raise this objection—under the requirements of the 21st rule of this Court.

In Life Ins. Co. vs. Pendleton, 112 U. S. 696, it is said (p. 709):

> "The weight of authority is in favor of the rule that a distinct denial of liability and refusal to pay, on the ground that there is no contract, or that there is no liability, is a waiver of the condition requiring proof of the loss or death. It is equivalent to a declaration that they will not pay, though the proof be furnished. (Authorities cited.)
>
> "The preliminary proof of loss or death required by a policy is intended for the security of the insurers in paying the amount insured. If they refuse to pay at all, and base their refusal upon some distinct ground without reference to the want or defect of the preliminary proof, the occasion for it ceases, and it will be deemed to be waived. And this can work no prejudice to the insurers, for in an action on the policy the plaintiff

would be obliged to prove the death of the person whose life was insured, whether the preliminary proofs were exhibited or not."

In Ins. Co. vs. Rodel, 95 U. S. 232, there was a similar clause in reference to proof of death or loss, and a condition that, if the assured should "die by his own hand," the policy should be void. The assured committed suicide by taking poison, and a recovery was had upon the ground that he was insane at the time. It was there held: that proof of death was all that was required to be given to the Company.

Respectfully submitted,

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